

(1998) 04 MAD CK 0129

In the Madras High Court

Case No : Writ Petition No"s. 13559 and 13560 of 1988 and W.M.P. No"s. 20314 and 20315 of 1988

V. Ramanujam

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 139, 215
Income Tax Rules, 1962 — Rule 117A, 40

Citation : (1999) 238 ITR 978

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : Subbaraya Aiyer, for the Appellant; C.V. Rajan, for the Respondent

Judgement

K. Gnanaprakasam, J.—The petitioners in both the writ petitions are one and the same. The facts and relief sought for are also identical. The facts, leading to filing these writ petitions are as follows :

The petitioner was having a licence for arrack blending and bottling unit at Tanjore. He is an Income Tax assessee also. For the assessment years 1984-85 and 1985-86, the Income Tax Officer made elaborate enquiries in view of the raid conducted in the premises of the petitioner. That, in order to complete the assessment and purchase peace with the Department, the petitioner filed a settlement petition to the Commissioner of Income Tax, Central-I, Madras 34. After having discussions, the Commissioner of Income Tax estimated the income of the petitioner and gave direction to the Income Tax Officer to complete the assessment as follows :

Rs. 1984-85 50,00,000 1985-86 60,00,000

2. The petitioner had filed his return of income on March 26, 1986, for the assessment year 1985-86 admitting a total income of Rs. 60,04,050 in pursuance of the settlement arrived at with the Commissioner of Income Tax,

Central-I, by his proceedings in C. No. 51544/1(3) of 1985-86/Central-I dated March 25, 1986. The Income Tax Officer completed the assessment on July 8, 1986, at a total income as returned by the assessee and while completing the assessment, he also levied interest u/s 139(8) of the Act to the extent of Rs. 3,07,650 and also interest u/s 215 of the Act to the extent of Rs. 4,96,031.

3. For the assessment year 1984-85, the petitioner originally filed a return of income on March 19, 1985, admitting income of Rs. 14,03,804. But, in pursuance of the settlement petition with the Income Tax Department, the petitioner filed a revised return of income on April 28, 1986, and returned a sum of Rs. 55,00,000 in arrack business. While determining the total income, the Income Tax Officer also levied interest u/s 139(8) of the Act to the extent of Rs. 2,85,566 and interest u/s 215 of the Act to the extent of Rs. 9,32,950.

4. The petitioner filed waiver petitions under Rule 40(5) of the Income Tax Rules to the Inspecting Assistant Commissioner of Income Tax, Central Circle, Madras, for waiving interest levied under Sections 215 and 139(8) of the Income Tax Act under Rule 117A(v) of the Rules, on the ground that the assessments were in pursuance of the settlement arrived at by the Commissioner and, therefore, the question of payment of interest did not arise. Further, substantial higher income was fixed at the settlement and the same was accepted by the petitioner only with a view to extend co-operation in the assessment proceedings. In fact, there was almost an understanding between the petitioner and the Department at the time of the settlement that the interest should be waived in full, if returns and tax are paid in pursuance of the settlement. But, however, the interest was levied and the same is questioned in this action.

5. The petitioner estimated his income on the basis of the books of account and also paid the advance tax accordingly. But, the petitioner filed the return on the basis of the income arrived at the settlement. That in the said circumstances, the petitioner could not have anticipated that there was lapse on the part of the petitioner in not having paid the advance tax and in respect of the waiver of interest u/s 139(8). The petitioner also sent petitions periodically, seeking time till February 28, 1985, and sent the return for the assessment year 1984-85 and the return was actually filed on March 19, 1985. For the assessment year 1985-86, there was an application for time till December 31, 1985.

6. The Income Tax Officer, Central Circle-I, by his order dated August 29, 1986, in P. A. No. 47-055-HQ-5440 of 1985-86 reduced the interest u/s 139(8) to Rs. 80,695 and interest charged u/s 215 was reduced to Rs. 49,240 for the assessment year 1985-86. For the assessment year 1984-85, the officer reduced the interest u/s 139(8) to Rs. 14,140 and the interest charged u/s 215 was waived in full.

7. Aggrieved by the said order, the petitioner has filed a petition u/s 264 of the Income Tax Act to the Commissioner of Income Tax, Central-I, to waive the entire payment of interest, on the ground, that he had agreed to pay the Income

Tax on the amount arrived at in the settlement and the payment of interest was not contemplated at that time. Further, returns were also filed during the period of amnesty scheme. Hence, the benefit of the amnesty scheme also should be extended to the petitioner. The respondent, by his order dated September 2, 1988, in C. No. 1511/1(1&2) of 1987-88, Central-I, dismissed the waiver petition and observed that there was no jurisdiction for any further reduction of waiver under Rules 40 and 117A of the Income Tax Rules, which according to the petitioner, is illegal and contrary to law. Aggrieved by the said order, the petitioner filed the present writ petitions.

8. I heard the respective submissions of the learned advocates for the petitioner and also the respondent.

9. The learned advocate for the petitioner has submitted that at the time when the petitioner filed the return, the amnesty scheme formulated by the Government of India was invoked. As such, the petitioner is entitled to have the waiver of interest. The amended scheme should have been extended to the petitioner's case. But, the respondent totally turned down the request of the petitioner and passed an order, which is illegal.

10. The petitioner further submitted that he could not anticipate the income tax and hence, the petitioner was not in a position to anticipate the tax payable and only in the said circumstances, the petitioner claims waiver of interest, since the assessment was completed after more than a year and there was a delay in completion of assessment, which was not due to the petitioner and that therefore, he is entitled to waiver of entire interest.

11. Learned advocate for the petitioner also submitted that in a similar case, the Andhra Pradesh High Court in the case of M.G. Brothers Vs. Commissioner of Income Tax, , had quashed the order to the extent of waiver of interest claimed by the assessee and remitted the matter for fresh disposal. The learned single judge in W. P. No. 10800 of 1987 has followed the principles laid down in M.G. Brothers Vs. Commissioner of Income Tax, , which reads as follows (page 712) :

"Before parting with this matter, we must refer to one aspect which is disturbing. The Income Tax Officer seems to have charged the interest in the assessment order without stating any reasons whatsoever. He seems to have treated the charge of interest as a matter of automatic consequence and that an assessee has no say in these matters before interest is actually charged. It would also appear that the Income Tax Officer considered the charge of interest as part of the assessment, although the power to levy interest is conferred altogether under different provisions not dealing with the determination of total income and computation of tax. We have already referred earlier that the assessee has a right to ask for waiver or reduction of interest leviable u/s 215, under Rule 40 of the Income Tax Rules, and the interest leviable u/s 139, under Rule 117A of the Income Tax Rules. It, therefore, follows that, before the charge of interest, the Income Tax Officer should give an opportunity to the assessee to show cause

why interest should not be levied. Before actually charging the interest, the Income Tax Officer should consider the representations made by the assessee and if justification exists either for waiver or for reduction of interest, he should do so even before passing a formal order. It would not be proper for the Income Tax Officer to levy interest as a matter of course driving an assessee to file representations for waiver or for reduction of interest, as this would result in avoidable hardship to the assessee in the matter of payment of interest before his representations for waiver or for reduction of interest are considered. The charge of interest in a routine fashion in the assessment order is also open to attack by an assessee on the ground that the Income Tax Officer did not apply his mind and that the interest was charged without the Income Tax Officer deriving satisfaction that justification exists for charge of such interest. We must, therefore, administer caution that, before charge of interest either under Sections 215, 216, 217 or 139 of the Act, the Income Tax Officer should give an opportunity to the assessee to show cause why interest should not be charged, consider the assessee's representation in the matter and then pass a formal order, if circumstances require the charging of such interest."

12. Learned advocate for the petitioner has submitted that the abovesaid decision has been followed in number of writ petitions including the one cited above. That in the said circumstances, he has submitted that it is a fit case, where a similar order should be passed.

13. But, on the contrary, learned advocate for the respondent has submitted that the waiver of interest is a discretionary power given to the authority and, in fact, some benefit was granted to the assessee and, hence, the order passed by the respondent does not at all suffer from any illegality or infirmity and, hence, the petitioner is not justified in questioning in this writ petition and that, therefore, the writ petitions are liable to be dismissed.

14. To support and sustain his submissions, he placed reliance upon the judgment reported in Smt. Harbans Kaur etc. Vs. Commissioner of Wealth-tax, Jullundur, . But, in the very same judgment, it has been held that (page 421) :

"It is understood in clear terms that the said discretion in the Income Tax Act is to be exercised in a reasonable and fair manner. The decision of the Bombay High Court in Purshottam Thackersey Vs. K.N. Anantarama Ayyar, Commissioner of Income Tax and another (No. 2), , cited before us, only shows that the order of the Commissioner declining to waive the penalty without advancing any reason whatsoever cannot be supported and the matter was remitted to the Commissioner for passing an order afresh."

15. I have carefully considered the rival submissions of learned advocates for the petitioner and also the respondent.

16. From the impugned order, I am unable to find out whether the respondent has given any opportunity to the petitioner/assessee to show cause, as to why the interest should not be levied. That in the circumstances, I feel that the

respondent has passed an order, without giving an opportunity to the petitioner and, therefore, the order passed by the respondent has got to be quashed only to the extent with regard to the waiver of interest alone, and the same is hereby quashed.

17. In the said view of the matter, these writ petitions are remanded back to the respondent for disposal of waiver petitions filed by the petitioner. The respondent is hereby directed to give an opportunity to the petitioner and then decide the matter in accordance with law, within three months from the date of receipt of the copy of the order.

18. In the result, these writ petitions are disposed of. However, there will be no order as to costs. Consequently, the connected W. M. Ps. are also dismissed.