
(1998) 04 MAD CK 0010

In the Madras High Court

Case No : Writ Petition Nos,. 13559 and 13560 of 1988 and WMP No's. 20314 and 20315 of 1988

V. RAMANUJAM

APPELLANT

Vs

COMMISSIONER OF INCOME TAX

RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:

Citation : (1998) 149 CTR 211

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Division Bench

Judgement

K. GMANAPRAKASAM, J.:

The petitioner 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:

2. The petitioner was having a licence for arrack blending and bottling unit at Tanjore. He is an Income Tax assessee also. For the asst. yrs. 1983-

84, and 1985-86, the ITO 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 in the Department, the petitioner filed a settlement petition to the CIT, Central I, Madras-34. After having

discussions, the CIT estimated the income of the petitioner and gave direction to the ITO to complete the assessment as follows :

Year Rs.

1984-85 50,00,000

1985-86 60,00,000

3. The petitioner had filed his return of income on 26th March, 1986 for the asst.

yr. 1985-86 admitting a total income of Rs. 60,04,050 in pursuance of settlement arrived at with the CIT, Central I by his proceeding in C. No. 51544/1(3) 85-86/Central 1 dt. 25th March, 1986. The ITO completed the assessment on 8th July, 1986 at a total income as returned by the assessee and while completing the assessment, he also levied interest under s. 139(8) of the Act to the extent of Rs. 3,07,650 and also interest under s. 215 of the Act to the extent of Rs. 4,96,031.

4. For the asst. yr. 1984-85, the petitioner originally filed a return of income on 19th March, 1985 admitting income of Rs. 14,03,804. But, in pursuance of the settlement petition with the IT Department, the petitioner filed a revised return of income on 28th April, 1986 and returned a sum of Rs. 55,00,000 in arrack business. While determining the total income by the ITO, he also levied interest under s. 139(8) of the Act to the extent of Rs. 2,85,566 and interest under s. 215 of the Act to the extent of Rs. 9,32,950.

5. The petitioner filed waiver petitions under r. 40(5) of the IT Rules to the IAC, Central Circle, Madras for waiving interest levied under s. 215 and 139(8) of the IT Act under r. 1PA(v) of the Rules on the ground that the assessments were in pursuance of the settlement arrived at by the CIT 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 in 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.

6. The petitioner estimated his income on the basis of the book account and also paid the advance tax accordingly. But, the petitioner filed the return on the basis of the Income Tax 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 under s. 139(8). The petitioner also sent petitions periodically seeking time till 28th Feb., 1985 and sent the return for the asst. yr. 1984-85 and the return was actually filed on 19th March, 1985. For the asst. yr. 1985-86, there was an application for time till

31st Dec., 1985.

7. The ITO, Central Circle I, by his order dt. 29th Aug., 1986 in PA No. 47-055HQ-5440/85-86 reduced the interest under s. 139(8) to Rs.

30,695 and interest charged under s. 215 was reduced to Rs. 49,240 for the asst. yr. 1985-86. For the asst. yr. 1984-85, the officer reduced the

interest under s. 139(8) to Rs. 14,140 and the interest charged under s. 215 was waived in full.

8. Aggrieved by the said order, the petitioner has filed a petition under s. 264 of the IT Act to the CIT, 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 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 dt. 2nd Sept., 1988 in C. No. 1511/1(1&2)/87/88 Central I, dismissed the

waiver petition and observed that there was no justification for any further reduction of waiver under r. 40 and 117 of the IT Rules, which

according to the petitioner is illegal and contrary to law. Aggrieved by the said order, the petitioner filed the present writ petitions.

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

10. The learned advocate for the petitioner has submitted that at the time when the petitioner filed the return, the amended 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 round the requests of the petitioner and passed an order, which is illegal.

11. 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.

12. The learned advocate for the petitioner also submitted that, in a similar case, this Court [sic-A.P. 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 WP No. 10800 of 1987 has followed the principles laid down in M. G. Bros. vs. CIT2 (supra) which

reads as follows:

Before parting with this matter, we must refer to one aspect which is disturbing.

The ITO 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 ITO 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 or interest leviable under s. 215, under r. 40 of the IT Rules, and the interest leviable under s. 139 under

r. 117A of the IT Rules. It, therefore, follows that, before the charge of interest, the ITO should give an opportunity to the assessee to show cause

why interest should not be levied. Before actually charging the interest, the ITO 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

ITO 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 is also open to attack by an assessee on the ground that the ITO did not apply his mind and that the interest was

charged without the ITO deriving satisfaction that justification exists for charge of such interest. We must, therefore, administer caution that before

charge of interest either under ss. 215, 216, 217 and 139 of the Act, the ITO 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".

13. The learned advocate for the petitioner has submitted that the above said decision was followed in a 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.

14. But, on the contrary, the 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.

15. 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, on the very same judgment, it has been held at p. 421 that :

It is understood in clear terms that the said discretion in the IT 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 CIT declining to waive the penalty without advancing any reason whatsoever cannot be supported and the matter was

remitted to the CIT for passing an order afresh"".

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

17. 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 said 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.

18. 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 a copy of the order.

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

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