(2009) 03 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 10473 of 2007

Vahid K. Ravji APPELLANT

Vs

Central Board of Direct Taxes and Others RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Income Tax Act, 1961 — Section 119(2), 131(1), 132, 139(8), 239

Citation : (2009) 03 GUJ CK 0008

Hon'ble Judges : S.R. Brahmbhatt, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Mihir H. Joshi, for Amrita M. Thakore, for the Appellant; Manish R. Bhatt, for Mauna M. Bhatt, for Respondents Nos. 1 - 3, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—This petition has been preferred challenging the legality of the action of respondent No. 1 rejecting the application made by the petitioner seeking condonation of delay in filing the return of income for Assessment Year 1983-84 by exercising powers u/s 119(2)(b) of the Income Tax Act, 1961 (the Act), which order came to be communicated vide letter dated 27.02.2006 issued by respondent No. 2 (Annexure Q).

2. The petitioner, an individual, has income from business carried on by the family members of the petitioner along with the petitioner in Partnerships, and two Proprietary concerns. On 29.08.1980, proceedings u/s 131(1) of the Act were undertaken at the various business premises and various books of accounts, cash books, stock registers, etc. pertaining to business were seized by the Department. This was followed by proceedings u/s 132 of the Act on 27.08.1981. It is the case of the petitioner that various letters were issued by the petitioner and other family members seeking return of various documents and account books so as to enable filing of returns for the Assessment Years 1981-82 to Assessment Year 1983-84. It is also a fact that Commissioner of Income Tax, Gujarat-II vide order dated 12.07.1984 authorized Assessing Officer

to retain the custody of books of account for scrutiny and completion of assessments for Assessment Years 1981-82 to 1983-84. Returns of income for various assessment years, preceding and succeeding the Assessment Year in consideration, were admittedly filed belatedly by not only the petitioner but various other concerns of the group. A consolidated chart has been produced by the petitioner at Annexure D, which reads as under:

Sr No

Assessment Years

M/s. M. Ravji

Ravji Family Trust Proprietor of M. Ravji & Co. (Rajkot)

M. Ravji Family Trust

Vahid K. Ravji I. Tax

Vahid K. Ravji W.Tax

1

1980-81

24.10.80

29.10.80

29.10.80

29.10.80

29.01.85

2

1981-82

29.02.84

19.03.84

19.03.84

27.03.84

07.02.85

3

1982-83

30.03.85

30.03.85

30.03.85

30.03.85

28.04.86

4.

1983-84

13.02.86

30.10.86

18.11.86

13.11.86

27.03.87

5.

1984-85

30.10.86

04.03.87

04.03.87

30.10.86

27.03.87

6.

1985-86

30.10.85

15.02.88

15.02.88

30.01.87

27.03.87

3. In so far as the petitioner is concerned, for the purposes of income tax, except for Assessment Year 1980-81, returns for two preceding years and two succeeding years have been admittedly filed beyond the prescribed period of limitation.

4. In relation to the year under consideration, the said return was not processed by respondent Department and the grievance of the petitioner in this regard is that because the return of income resulted in a refund likely to be made in favour of the petitioner, the said return has not been processed. It is further contended

that the order impugned dated 27.02.2006 is merely a communication from Chief Commissioner of Income Tax, Ahmedabad III, and respondent Board has not made any order, and if any order is made, the same has not been communicated to the petitioner. It is further submitted that said communication (Annexure Q) cannot be termed to be an order in law in absence of any reasoning contained therein. That the petitioner was merely seeking processing of the return of income filed by the petitioner and no prejudice was likely to be caused to the respondent Department.

5. On behalf of respondent Authority, an affidavit-in-reply dated 06.02.2009 has been tendered. It is submitted that provisions of Section 239 of the Act prescribe certain conditions for claiming refund and the return of income was admittedly filed belatedly without any sufficient cause. That in the circumstances, the respondent authority was entitled to come to the conclusion that there was no sufficient cause made out for condoning the delay in question considering the conduct of the petitioner.

6. When the petition was earlier heard, the Court called upon the learned Counsel to place on record the outcome of the proceedings for preceding and succeeding years. Vide affidavit dated 25.02.2009, petitioner has placed on record various assessment orders. As can be seen from the Assessment Order for Assessment Year 1982-83, penalty was directed to be levied u/s 271(1)(a) of the Act and interest was directed to be charged u/s 139(8) of the Act. The learned advocate informs that the petitioner has not challenged the assessment order and paid up the penalty levied as well as interest charged for belatedly filing the return. The same is the position in relation to Assessment Year 1981-82 as well as subsequent Assessment Year 1984-85.

7. Admittedly the return of income for Assessment Year 1983-84 was due on 30.06.1983, the previous year having ended on 30.06.1982. The return was filed only on 13.11.1986. The returns for preceding two years have been filed on 27.03.1984 and 30.3.1985 respectively, while the returns for Assessment Years 1984-85 and 1985-86 have been filed on 30.10.1986 and 30.01.1987. Thus, not only did the petitioner file returns for all the assessment years belatedly but for Assessment Year 1984-85, namely subsequent assessment year, return was filed prior to the return of income for the year under consideration namely Assessment Year 1983-84.

8. In the backdrop of the aforesaid facts, if respondent authority did not find it desirable or expedient as a case of genuine hardship, it cannot be stated that the said order suffers from any legal infirmity. The contention that the impugned order does not contain any reasons, does not merit acceptance because the order categorically states that on the facts and circumstances of the case, the reasons offered by the assessee have not been found fit to warrant condonation of delay. The petition therefore does not merit acceptance for the reasons stated hereinbefore.

9. The petition is accordingly rejected. Notice discharged. There shall be no order as to costs.