

(1984) 04 MAD CK 0038
In the Madras High Court
Case No : Writ Petition No. 704 of 1977

Wahab Bros.

APPELLANT

Vs

Inspecting Asstt. Commissioner and Another

RESPONDENT

Date of Decision : 24-04-1984

Acts Referred:

Constitution of India, 1950 — Article 14

Income Tax Act, 1961 — Section 139(1), 139(4), 139(8)

Citation : (1987) 163 ITR 27

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K.S. Sivaraman, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

Ramanujam, J.—The petitioner herein has prayed in this Writ Petition for the issue of a writ of certiorari to quash the order dt. 10-10-1975

of the CIT, the 2nd respondent herein, confirming the order dt. 20-12-1973 of the IAC, the first respondent herein, so far as it directs the payment

of interest u/s 139(8) of the IT Act, 1916 (hereinafter referred to as ""the Act"") for the asst. yr. 1972-73.

2. The petitioner is a firm carrying on business as Esso Dealers in Thanjavur. The firm was assessed to income tax on a total income of Rs. 70,300

by the ITO for the year 1972-73 as against the return of income filed by the assessee on 26-5-1973 admitting a total income of Rs. 60,406. While

making the assessment on a total income of Rs. 3,416 towards interest treating the firm as an unregistered firm for the purpose of calculation of

interest as per s. 139(8). The petitioner made a request to the IAC to waive the interest. But that request was rejected. Thereupon, the petitioner

filed a revision petition to the CIT u/s 264 of the Act contending that it was discriminatory to treat the registered firm as unregistered for the

purpose of the levy of interest u/s 139(8) inasmuch as the levy of interest is to compensate for the delay in completion of assessment and the

consequent realisation of tax. Reliance was placed in support of the contention on the decision of the Karnataka High Court in M. Nagappa and

Others Vs. Income Tax Officer, Central Circle I, Bangalore and Others, .

The CIT by his order dt. 10-10-1975 rejected the said contention. Aggrieved by the said order, the petitioner has come forward before this court

with Writ Petition to quash the same on the ground that the charging of interest on the petitioner-firm treating it as unregistered firm is discriminatory

when compared with the other assesseees who had filed the returns belatedly in the matter of calculation of interest for the delayed filing of the

return. According to the petitioner, the levy of interest u/s 139 is for the delayed filing of the return and the consequential delay in the realisation of

tax. Therefore, the levy of interest is compensatory in nature and, therefore, its incidence on all assesseees who had similarly delayed the filing of the

returns and who are covered by the provision should be the same. Besides, the chargeability of interest is directly related to the amount that is

recoverable from an assessee and hence could not be tagged on to the status in which the assessee is assessed to Income Tax. The classification of

registered firms which have not filed the return within the specified time as a separate class for the purposes of payment of interest u/s 139(8) does

not bear any relationship to the object that is to be achieved by the relevant section and hence it is violative of Art. 14 of the Constitution of India.

Reliance is also placed by the Id. counsel for the petitioner on the decision of a single Judge of the Karnataka High Court in M. Nagappa and

Others Vs. Income Tax Officer, Central Circle I, Bangalore and Others, and his order dt. 10-10-1975 rejected the said contention. Aggrieved by

the said order, the petitioner has come forward before this court with this Writ Petition to quash the same on the ground that the charging of

interest on the petitioner-firm treating it as unregistered firm is discriminatory when compared with the other assesseees who had filed the returns

belatedly in the matter of calculation of interest for the delayed filing of the return. According to the petitioner, the levy of the return and the

consequential delay in the realisation of tax. Therefore, the levy of interest on compensatory in nature and, therefore, its incidence on all assessees

who had similarly delayed the filing of the returns and who are covered by the provision should be the same. Besides, the chargeability of interest is

directly related to the amount that is recoverable from an assessee and hence could not be tagged on to the status in which the assessee is assessed to

Income Tax. The classification of registered firms which have not filed the return within the specified time as a separate class for the purposes of

payment of interest u/s 139(8) does not bear any relationship to the object that is to be achieved by the relevant section and hence it is violative of

Art. 14 of the Constitution of India. Reliance is also placed by the Id. counsel for the petitioner on the decision of a single Judge of the Karnataka

High Court in *M. Nagappa and Others Vs. Income Tax Officer, Central Circle I, Bangalore and Others*, and *Addl. Commissioner of Income Tax,*

Mysore and Others Vs. Mahadeshwara Lorry Service, . In *M. Nagappa and Others Vs. Income Tax Officer, Central Circle I, Bangalore and*

Others, , Venkatramiah, J. (as he then was) held that the object of levy of interest being just reimbursement of what the Government would lose by

delayed filing of the return, provision in s. 139(8) for the levy of interest in the tax which would have been payable if the firm had been assessed as

an unregistered firm is outside the said object, that the levy is more in the nature of a penalty than mere compensation, that the classification of

registered firms which have not filed the return within the specified time as a separate class for purposes of payment of interest u/s 139(2) does not

bear any relationship to the object to be achieved by that section. Section 139(1) as it stood prior to 1-4-1971, r/w s. 139(4), to the extent it

required a registered firm to pay interest at the specified rate on the tax assessed as if it were an unregistered firm whenever the registered firm

whenever the registered firm did not file the return within the specified time, was violative of Art. 14 of the Constitution and was therefore void.

Divisional Bench of the same High Court in *Addl. Commissioner of Income Tax, Mysore and Others Vs. Mahadeshwara Lorry Service*,

expressed its disagreement with the view taken by this court in *Mahendrakumar Iswarlal and Co. and Another Vs. Union of India (UOI)*, where in

s. 139(8) in so far as it treats the registered firms as unregistered for the purpose of the levy of interest is valid and not violative of Art. 14.

3. However, we find that the view taken by this court in Mahendrakumar Ishwarlal and Co. and Others Vs. Union of India (UOI) and Others, and Mahendrakumar Iswarlal and Co. and Another Vs. Union of India (UOI), has been accepted by the Gauhati High Court in Ganesh Das Sreeram Vs. Income Tax Officer, "A" Ward and Others, , Chhotalal and Co. Vs. Income Tax Officer, Morvi and Others, , Jiwanmal Hospital Vs. Income Tax Officer (Assessment II), , Hindustan Steel Forgings Vs. Commissioner of Income Tax, and Mohanlal Soni Vs. Union of India (UOI) and Others, . Mahendrakumar Iswarlal and Co. and Another Vs. Union of India (UOI), is a decision of a Division Bench of this court to which one of us was a party wherein an identical question as is now being raised by the petitioner has been specifically dealt with and this court has held that subjecting registered firms to the same treatment as unregistered firms in the matter of levy of interest cannot be said to be in any way arbitrary or colourable exercise of legislative power and as such does not violate Art. 14 of the Constitution and the reasons given by the IT Act to a registered firm, it would be in the same position as an unregistered firm and hence it is open to the legislature to say that one or the other of the privileges granted to a registered firm will not be available to such firms which have defaulted in submitting the return in time. It cannot be contended that the Legislature which granted the privileges given to the registered firms at all events and when the legislature chooses to withdraw the privileges given to a registered firm and unregistered firms. Though the Karnataka decisions referred to above deal with the above reasoning set out in the decision of this court in Mahendrakumar Iswarlal and Co. and Another Vs. Union of India (UOI), . The reasons given by this court in the said decisions for holding s. 139(8) as not violating Art. 14 have found acceptance from the other High Courts such as Gauhati High Court, Madhya Pradesh High Court, Punjab and Haryana High Court and the Calcutta High Court. It is, therefore, not possible for us to accept the contention of the Id. counsel that the decision in Mahendrakumar Iswarlal and Co. and Another Vs. Union of India (UOI), requires reconsideration in view of the decision of the Karnataka High Court. Since the question raised in this case is squarely covered by the said decision of Division Bench of this court in Mahendrakumar Iswarlal and Co. and Another Vs. Union of India (UOI), which decision has also found acceptance in the other High Courts. And

having regard to the reasoning given by the Division Bench in Mahendrakumar Iswarlal and Co. and Another Vs. Union of India (UOI), which has not been specifically dealt with by the Karnataka High Court in the said decisions, we are not in a position to accept the decision of the Karnataka High court as correct in preference to the view taken by the Division Bench of this court. Therefore, following the decision in Mahendrakumar Iswarlal and Co. and Another Vs. Union of India (UOI), this writ petition is dismissed. There will be no order as to costs. The Id. counsel for the petitioner makes an oral application for leave to appeal to Supreme Court against the Judgment just now pronounced. But having regard to the fact that this court has taken a uniform view as to the constitutional validity of s. 139(8) of the IT Act, 1961 and the said view of this court has been accepted by other High Courts except the Karnataka High Court and as already the decision of the Karnataka High Court which has taken a different view is the subject matter of an appeal before the Supreme Court, we do not feel that this is a fit case for grant of leave to appeal to Supreme Court. We, therefore, reject the oral application for grant of leave to appeal to Supreme Court.