(1994) 07 GUJ CK 0025

In the Gujarat High Court

Case No : Special Civil Application No. 6069 of 1983

Yashrat N. Bhatt — APPELLANT

Vs

Income Tax Officer — RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Income Tax Act, 1961 — Section 140A, 212(3A), 264
Income Tax Rules, 1962 — Rule 40

Citation : (1995) 212 ITR 522

Hon'ble Judges : M.R. Calla, J;M.B. Shah, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; B.J. Shelat and M.R. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

M.B. Shah, J.—The petitioner had filed a return of income for the assessment year 1979-80 on August 30, 1979, declaring the income of Rs. 81,610. The same was accepted by respondent No. 1 and an assessment order dated August 4, 1981, was passed. It is the say of the petitioner that prior to the submission of the return, the petitioner had paid advance tax by three instalments estimating his income for the assessment year 1979-80 at Rs. 22,920 on the basis of the order passed by respondent No. 1. It is his further contention that the books of account of the firms in which the petitioner is a partner were not closed and adjusted up to December 15, 1978, by which he should have submitted the estimate as provided u/s 212(3A) of the income tax Act, 1961 ("the Act", for short) and, therefore, he was under the bona fide impression that his share of profit in the said firms would be more or less equal to the income falling to his share in the preceding year. Subsequently, after receipt of details, some time in the last week of August, 1979, he had submitted his return showing the total income at Rs. 81,610. He further submitted that this increase in income was on account of increase in the business of the said firms in the assessment year under reference. He has further submitted that he had paid Rs. 29,626 on

August 14, 1981, as tax u/s 140A of the Act. The petitioner, thereafter, filed an application on October 17, 1981, before respondent No. 1 for waiving interest under rule 40 of the income tax Rules, 1962 ("the Rules", for short), as assessment in his case was completed after a lapse of more than one year after submission of the return on August 30, 1979, by contending that the delay of 11 months and 4 days in assessment was not attributable to the petitioner. Respondent No. 1, however, by his order dated August 27, 1982 (annexure "A-2"), rejected the application filed by the petitioner for waiver of interest and directed him to pay interest of Rs. 9,533.

2. The petitioner filed a revision application u/s 264 of the Act before respondent No. 2 praying, inter alia, that the order (annexure "A-2") be reversed and interest amount of Rs. 8,671 be waived entirely. That revision application was rejected by respondent No. 2 by his order dated September 9, 1983 (annexure "A-8"), passed by the Wealth-tax Officer, Circle I, Ward B, Rajkot, rejecting his application for waiver of interest.

3. Mr. Pathak, learned counsel appearing on behalf of the petitioner, submitted that the orders (annexures "A-2", "A-6" and "A-8") are on the face of them non-speaking orders or, in any set of circumstances, without application of mind to rule 40 of the Rules.

4. In our view, the submission made by learned counsel for the petitioner requires to be accepted. The orders (annexures "A-2" and "A-8") passed by the authorities below are without assigning any reasons. Similarly, the order (annexure "A-6") passed by the Commissioner of income tax also requires to be set aside because he has not taken into consideration the provisions of rule 40 before rejecting the revision application filed by the petitioner for waiver of interest. The Commissioner has not considered the contention raised by the petitioner that, in any set of circumstances, the delay in assessment was not attributable to the assessee and, therefore, the interest should be waived under rule 40. Considering the facts stated in the order passed by the Commissioner of income tax, it is apparent that the Commissioner has not assigned any reasons as to why the provisions of rule 40 are not applicable to the facts of the present case.

5. Dealing with the similar contention in the case of Patel Engineering Co. Ltd. Vs. C.B. Rathi and Another, , this court held that in such circumstances the order of the Inspecting Assistant Commissioner was patently vitiated for want of reasons and his approach was manifestly contrary to the object, purpose, scope and intendment of sub-rule (5) of rule 40. In this view of the matter, the petition is allowed. The impugned orders (at annexures "A-2", "A-6" and "A-8") are quashed and set aside. Respondent No. 2 is directed to decide the revision application of the petitioner afresh after taking into consideration the criteria laid down in rule 40 of the Rules. With regard to the order (annexure "A-8") passed by the Wealth-tax Officer, the Wealth-tax Officer is directed to decide the application of the petitioner afresh. Rule made absolute to the aforesaid extent

with no order as to costs.

