

(1997) 02 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 13865 and 13599 of 1996

Mohd. Yousuf and Another

APPELLANT

Vs

Commissioner of Income Tax
and Another

RESPONDENT

Date of Decision: Feb. 6, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 139, 139(8), 217

Citation: (1999) 235 ITR 329

Hon'ble Judges: V.K. Bali, J; N.K. Agrawal, J

Bench: Division Bench

Advocate: B.K. Jhingan, for the Appellant; R.P. Sawhney, Senior Advocate and Rajesh Bindal, for the Respondent

Judgement

N.K. Agrawal, J.

These are two writ petitions (Civil Writ Petitions Nos. 13865 and 13599 of 1996) filed by two brothers, namely, Mohd. Yousuf and Mohd. Rehmat Ullah, respectively, under Article 226 of the Constitution for quashing the orders passed by the Commissioner of Income Tax, Patiala* for the assessment years 1988-89 and 1987-88. Since the facts and questions arising in both the petitions are identical, these are being decided together.

2. Both the petitioners herein had invested, as partners, certain money by way of capital in a partnership-firm, Azad Rice Mills, Malerkotla. The Assessing Officer issued notices u/s 147 read with Section 148 of the Income Tax Act, 1961 (for short, "the Act"), on the ground that certain taxable income had escaped assessment. Both the petitioners filed returns of income, showing only agricultural income. Notices had been issued for the assessment years 1987-88 and 1988-89. Since the present writ petitions relate to a question regarding waiver of interest for the assessment

years 1987-88 and 1988-89 the facts relevant to those orders are being examined.

3. Mohd. Yousuf (in CWP No. 13865 of 1996) was assessed to tax u/s 143(3) of the Act by a common assessment order dated March 28, 1994, for the assessment years 1987-88 and 1988-89. Taxable income was determined by the Assessing Officer at Rs. 1,04,000 for the assessment year 1988-89 on the basis of investment of Rs. 89,000 made by the petitioner in the partnership firm and Rs. 15,000 estimated to be the income from undisclosed sources utilised in meeting the household expenses. The Assessing Officer, after determining the taxable income as aforesaid, proceeded to charge interest under Sections 139(8) and 217 of the Act. The petitioner, Mohd. Yousuf, filed an appeal against the assessment order with the plea that his sole and exclusive source of income was agriculture. The Deputy Commissioner of Income Tax dismissed the petitioner's plea and upheld the assessment for 1988-89. Thereafter, the petitioner filed an application for the waiver of interest charged u/s 139(8) and the Deputy Commissioner waived interest, vide order dated May 25, 1995. However, the petitioner's application for waiver of interest charged u/s 217 of the Act was rejected. The petitioner filed a revision application u/s 264 of the Act before the Commissioner of Income Tax, seeking waiver of interest charged u/s 217 for the assessment year 1988-89. The petitioner raised a plea that, in the case of his brother, Mohd. Rehmat Ullah, interest charged u/s 217 had been waived in similar circumstances and, therefore, similar view must be taken in the case of the petitioner also. This plea, however, did not find favour with the Commissioner of Income Tax and the petitioner's revision application came to be rejected.

4. In the case of Mohd. Rehmat Ullah (in CWP No. 13599 of 1996), assessments were framed, after issuing notice u/s 147 read with Section 148 of the Act, by a common assessment order dated March 28, 1994,, for the assessment years 1987-88 and 1988-89. Taxable income was determined by the Assessing Officer for the assessment year 1987-88 at Rs. 1,05,000. Interest was also charged under Sections 139(8) and 217 of the Act. In appeal, assessment made at Rs. 1,05,000 for the assessment year 1987-88 was upheld by the Deputy Commissioner of Income Tax, vide order dated March 16, 1995. The Deputy Commissioner rejected the petitioner's plea that the petitioner derived income from agriculture only and that income was not taxable. The petitioner thereafter filed an application before the Deputy Commissioner for waiver of interest charged u/s 217 of the Act. The Deputy Commissioner sustained interest for one year and waived the balance amount charged u/s 217 of the Act. The application for waiver of interest charged u/s 159(8) had earlier been rejected by the Assessing Officer. The petitioner filed a revision application before the Commissioner of Income Tax u/s 264 of the Act but that was rejected.

5. In the present writ petitions, orders quashing the assessee's applications, seeking waiver of interest, have been challenged.

6. Shri B. K. Jhingan, learned counsel for the petitioners, has argued that contrary views were taken by the taxing authorities while dealing with the applications of the two brothers seeking waiver of interest and that was not fair and justified. In the case of Mohd. Yousuf, interest charged u/s 139(8) was waived but, in the case of Mohd. Rehmat Ullah, interest charged u/s 139(8) was sustained and not waived. Similarly, in the case of Mohd. Rehmat Ullah, interest charged u/s 217 of the Act was sustained for a period of one year and the balance was waived but, in the case of Mohd. Yousuf, no such relief was granted. Since the facts and circumstances in the cases of both the petitioners, who were brothers, were identical and both had been assumed to be deriving income from other sources, there was no sufficient reason to take divergent views while dealing with the applications seeking waiver of interest,

7. Interest u/s 139(8) of the Act is chargeable if an assessee files return after the due date or fails to file the return. Interest is charged on the amount of tax which is found payable by the assessee at the time of assessment. Interest u/s 217 is chargeable if an assessee fails to file the statement or the estimate of advance tax and does not pay the advance tax. Interest is to be computed on the amount of assessed tax.

8. As has already been noted, the circumstances in the cases of the two petitioners were similar but interest u/s 139(8) was waived in the case of one petitioner but sustained in the case of the other. Similarly, interest u/s 217 was charged for one year only in the case of one petitioner whereas, in the case of the other petitioner, interest was charged for the entire period. There appears no sufficient reason or any justification to adopt two different courses in the cases of the two petitioners.

9. In the result, both the writ petitions are allowed. In the case of Mohd. Yousuf, interest charged u/s 217 of the Act for the assessment year 1988-89 is sustained for the period of one year and the balance amount of interest is waived as was done by the Deputy Commissioner of Income Tax in the case of Mohd. Rehmat Ullah for the assessment year 1987-88. In the case of Mohd. Rehmat Ullah, interest charged u/s 139(8) of the Act for the assessment year 1987-88 is waived as was done in the case of Mohd. Yousuf for the assessment year 1988-89. No order as to costs.