
(1988) 03 KL CK 0029

High Court Of Kerala

Case No: W.A. No. 289 of 1982 in O.P. No. 967 of 1982-A

A.C. Gopinatha Menon

APPELLANT

Vs

Commissioner of
Income Tax and
Another

RESPONDENT

Date of Decision: March 28, 1988

Acts Referred:

- Income Tax Act, 1961 - Section 139(2), 139(8), 148, 215, 273

Citation: (1988) 73 CTR 185 : (1988) 173 ITR 404

Hon'ble Judges: M. Fathima Beevi, J; K.S. Paripoornan, J

Bench: Division Bench

Advocate: C.M. Devan, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

K.S. Paripoornan, J.

The appellant was the petitioner in O. P. No. 967 of 1982-A. He is an assessee to Income Tax. For the assessment year 1978-79, the second respondent, the Income Tax Officer, levied interest u/s 139(8) of the Income Tax Act of a sum of Rs. 2,140 and a sum of Rs. 1,549 by way of interest u/s 215 of the Act. The total interest thus levied came to Rs. 3,689. The petitioner filed an application u/s 273A of the Income Tax Act before the first respondent, the Commissioner of Income Tax, to waive the interest levied. It was rejected by exhibit P-3 order dated December 5, 1981. In the original petition, the challenge was against exhibit P-1 assessment order, levying interest u/s 139(8) as also Section 215 of the Act and against exhibit P-3 order as illegal and unsustainable.

2. Narendran J. by judgment dated February 12, 1982, rejected the original petition on the ground that no grounds were made out for interference. The petitioner has come up in writ appeal.

3. We heard counsel for the appellant as also counsel for the Revenue. The only question argued before us was that the Commissioner of income tax erred in his interpretation of Section 273A(1) of the Income Tax Act in holding against the assessee/appellant. Section 273A, in so far as it is relevant in the instant case, is extracted hereinbelow :

" 273A. Power to reduce or waive penalty, etc., in certain cases,--(1) Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise,--...

(iii) reduce or waive the amount of interest paid or payable under Sub-section (8) of Section 139 or Section 215 or Section 217 or the penalty imposed or imposable u/s 273,

if he is satisfied that such person--...

(c) in the case referred to in Clause (iii), has, prior to the issue of a notice to him under Sub-section (2) of Section 139, or where no such notice has been issued and the period for the issue of such notice has expired, prior to the issue of notice to him u/s 148, voluntarily and in good faith made full and true disclosure of his income and has paid the tax on the income so disclosed. "

The undisputed facts in this case are : the return for the assessment year 1978-79 was due on June 30, 1978. It was filed only on November 23, 1978. The tax, as per the return, was paid, on December 7, 1978. The disclosure in the instant case was made through the medium of a return. So, in this case, no question of issuing a notice u/s 139(2) or Section 148 of the Act can arise. The tax on the income disclosed was not paid along with the disclosure. It was fully paid long after the disclosure was made, i.e., on December 7, 1978. On these premises, we have to hold that the assessee failed to pay the tax on the income so disclosed prior to the issue of notice u/s 139(2) or Section 148 of the Act (in this case, along with the return). In exhibit P-3, the Commissioner of Income Tax has expressed the said view in rejecting the application filed by the assessee and in denying the relief prayed for u/s 273A of the Act.

4. We are of the view that exhibit P-3 is justified in law and no interference is called for in this writ appeal.

5. The writ appeal is dismissed.