(1978) 02 KL CK 0035

High Court Of Kerala

Case No: O.P. No. 3022 of 1977

P.A. Mohammed Abdul Khader and Co.		APPELLANT
	Vs	
Commissioner of Income Tax and Another		RESPONDENT

Date of Decision: Feb. 9, 1978

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 139, 140A, 148, 215, 217

Citation: (1978) 2 ILR (Ker) 287 : (1978) 112 ITR 552

Hon'ble Judges: N.D.P. Namboodiripad, J

Bench: Single Bench

Judgement

N.D.P. Namboodiripad, J.

A proceeding under the Income Tax Act, 1961 (briefly "the Act"), has led to this application under article 226 of the Constitution.

The facts are not seriously disputed. The petitioner is an assessee on the file of the Income Tax Officer, A Ward, Palghat, and for the assessment year 1966-67, he was assessed to Income Tax by exhibit P-1 order dated March 26, 1977. The tax determined was Rs. 82,650, to which there is advance payment u/s 140A to the tune of Rs. 77,048. But while pronouncing the order or assessment the Income Tax Officer also levied what is called penal interest u/s 217 and section 139(8) of the Act, the petitioner filed a petition before the first respondent, who is the Commissioner of Income Tax, Kerala II, on the basis of section 273A of the Act. That petition was dismissed by exhibit P-3 order dated July 25, 1977. It is the validity of exhibit P-3 order that is challenged in this petition.

2. To appreciate the contentions of the petitioner it is necessary to extract the relevant provisions of section 273A of the Act which formed the basis of the

application which led to exhibit P-3 order. The relevant portions of section 273A are sub-sections (1)(i), (iii) and (c).

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-

(i) reduce or waive the amount of penalty imposed or impossible on a person under clause (i) of sub-section (1) of section 271 for failure, without reasonable cause, to furnish the return of total income which he was required to furnish under sub-section (1) of section 139; or...

(ii) reduce or waive the amount of interest paid or payable under sub-section (8) of section 139 of section 215 or section 217 or the penalty imposed or impossible u/s 273, if he is satisfied that such person-.........

(c) in the cases 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.

And also has, in all cases referred to in clauses (a), (b) and (c), co-operated in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year.

The ground upon which the first respondent passed exhibit P-3 order rejecting the petitioner; s claim is that the cumulative conditions laid down in the relevant provisions of section 273A have not been complied with. As far as the present case is concerned, the non-compliance relates to the condition "or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year" occurring in section 273A(1). The petitioner has no case that a satisfactory arrangement for payment of the interest due under exhibit P-1 order was made if the relevant provision is to be interpreted in its literal sense. But his case is that there is compliance with this condition because he laid an application before the Income Tax Officer, namely, the second respondent, u/s 220(3) of the Act. I may read that provision:

220. When tax payable, and when assessee deemed in default. -...

(3) Without prejudice to the provisions contained in sub-section (2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Income Tax Officer may extend the time for payment or allow

payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

3. It is the case of the petitioner that though in consequence of his application he received a notice from the Income Tax Officer and he offered his explanation, no order as such was passed by the second respondent and that since no order has been passed on the petition, it shall be deemed that arrangement has been made by him for the payment of interest due. In the first place, from the use of the expression "may" found in section 220(3), it is possible to contend that the passing of an order by the Income Tax Officer is not mandatory when an application is laid u/s 220(3) of the Act. Secondly, it should be noted that even if he should pass an order, the order can only (a) extend the time for payment or (b) allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case. So even if an order is passed u/s 220(3) by the Income Tax Officer in compliance with the direction contained therein. I fail to understand how that order can amount to the making of satisfactory arrangement for payment of tax or interest referred to in section 273A of the Act. It cannot, therefore, be said that the conditions laid down in section 273A have been complied with so as to justify the first respondent for interference with so as to justify the first respondent for interference with that portion of exhibit P-1 which relates to the levy of penal interest u/s 217 and 139(8) of Act.
In the result, this original petition is dismissed but, in the circumstances of the case, without costs.