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Andhra Pradesh High Court

Case No: Writ Petition No. 8377 of 1990

Sanjana Films		APPELLANT
	Vs	
Commissioner of Income Tax and Another		RESPONDENT

Date of Decision: April 24, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 139(2), 139(8), 217, 271(1), 273A

Citation: (2001) 169 CTR 293 : (2001) 250 ITR 304 : (2001) 117 TAXMAN 654

Hon'ble Judges: S.R. Nayak, J; S. Ananda Reddy, J

Bench: Division Bench

Advocate: S. Dwarakanath, for the Appellant; J.V. Prasad, for the Respondent

Judgement

S.R. Nayak, J.

The petitioner is a partnership firm engaged in the business of film distribution and running a cinema theatre. The returns of income for the assessment years 1986-87 and 1987-88 were due to be filed on July 31, 1986, and July 31, 1987, respectively. In respect of the assessment years 1986-87 and 1987-88, the petitioner filed Form No. 6 for extension of time up to August 31, 1986, and August 31, 1987, respectively. However, the returns for both the assessment years 1986-87 and 1987-88 were filed voluntarily by the petitioner on October 13, 1987, and May 9, 1988, respectively, and no notice was served by the Department for filing of the return under any of the provisions of the Income Tax Act. The second respondent completed the assessment based on the primary facts placed before him by the petitioner. However, an expenditure of Rs. 2,00,000 in assessment year 1986-87 and Rs. 1,00,000 in the assessment year 1987-88 was disallowed by the second respondent on the ground that the petitioner was unable to substantiate its claim for expenditure and agreed to them being added back.

2. While so computing the assessment, the second respondent levied interest as follows :

	1986-87	1987-88
	Rs.	Rs.
Under section 139(8)	10,955	5,456
Under section 217	16,929	-
Under section 215	-	11,519

[The interest for the assessment year 1986-87 was, however, later modified to Rs. 2,993 (Section 139(8)) and Rs. 3,848 (Section 217) as per the order dated November 28, 1988, of the second respondent.]

3. By his orders dated February 8, 1989, the second respondent also levied penalty u/s 271(1)(a) of the Act in a sum of Rs. 35,958 and Rs. 21,708 for the assessment years 1986-87 and 1987-88, respectively, for late filing of the returns, rejecting the petitioner''s explanation. On appeal to the Commissioner (Appeals), the penalty levied for the assessment year 1986-87 was confirmed. The penalty levied for the assessment year 1987-88 was reduced to Rs. 18,432. According to the petitioner, as the interest and penalties, even as reduced by the Commissioner (Appeals), were oppressive and onerous, it filed a petition u/s 273A of the Act before the first respondent for waiver of the amounts of interest and penalties. The first respondent by his order dated January 22, 1990, dismissed the waiver petition.

4. Hence, this writ petition seeking quashing of the order of the first respondent dated January 22, 1990, and for declaration that the petitioner is entitled to waiver of interest amount of Rs. 6,841 levied as per proceedings dated November 28, 1988, and Rs. 16,975 levied as per the assessment order dated November 18, 1988, passed by the second respondent for the assessment years 1986-87 and 1987-88, respectively.

5. The application of the petitioner is rejected mainly on the ground that Section 273A(1) of the Income Tax Act, 1961, does not permit waiver of interest for more

than one year. In other words, the impugned order is essentially based on an assumption that no relief could be granted u/s 273A(1) of the Act in respect of more than one assessment year. The Commissioner, in the impugned order, has opined :

"As regards the offence, it is only the offence of one year which can be considered for waiver as the section speaks of only declaration and not declarations. The offence for more than one year can never be considered when the declarations are made at different points of time and at the very outset, I decide that the assessee is not entitled for any claim of waiver of interests under Sections 139(8) and 215 and penalty u/s 271(1)(a) in respect of the second default, i.e., 1987-88 assessment year. Even on the merits, he is not entitled for such relief as discussed in detail in 1987-88 assessment year."

6. The above reasoning of the Commissioner to reject the petitioner''s waiver petition is ex facie erroneous and perverse.

7. Sub-section (3) of Section 273A of the Income Tax Act, 1961, reads thus :

"Where an order has been made under Sub-section (1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order."

(The emphasis is supplied by the court)

8. It is quite apparent from Sub-section (3) of Section 273A of the Act that the embargo placed under that Sub-section not to allow the relief is applicable only in respect of a subsequent assessment year not covered by an order made under Sub-section (1) of Section 273A. It is permissible for the Commissioner to grant relief u/s 273A(1) of the Act by a common proceeding or order in respect of more than one assessment year, and if he grants the relief once u/s 273A(1) in respect of one or more assessment years, the prohibition contained in Sub-section (3) of Section 273A of the Act that the assessee shall not be entitled to any relief under the section is attracted if there is any subsequent request for the relief u/s 273A in respect of any subsequent assessment year or years. In the instant case, the petitioner by his common application dated May 16, 1989, sought for waiver of interest and penalty in respect of two assessment years 1986-87 and 1987-88, and, therefore, there was no legal impediment for the Commissioner to consider the request of the petitioner in respect of both the assessment years.

9. The second reason given by the Commissioner to reject the application is that the disclosure of income was hot voluntary and it was not in good faith. This conclusion of the Commissioner is without any basis and grounded on a perverse reasoning. It is a matter of record that the petitioner himself has voluntarily made the disclosure. The reasoning of the Commissioner that since the returns were filed by the petitioner-assessee beyond the period of limitation, a notice u/s 139(2) could have

been issued, cannot be equated to saying that the returns filed by the petitioner were involuntary. Therefore, we are of the considered opinion that there was no proper application of mind on the part of the Commissioner to the facts of the case also. We think the ends of justice would be met by setting aside the impugned order and remanding the proceeding''s to the concerned competent authority with a direction to reconsider the application of the petitioner afresh.

10. In the result and for the foregoing reasons, we allow this writ petition and quash the impugned order of the Commissioner dated January 22, 1990. The proceeding''s shall stand remitted to the concerned competent authority who is empowered to exercise power u/s 273A of the Income Tax Act, 1961, with a direction to reconsider and dispose of the application of the petitioner dated May 16, 1989, de novo strictly in accordance with law and on the merits by a reasoned order expeditiously, preferably within a period of three months from the date of receipt of a copy of this order. No costs.