Commissioner of Income-Tax, Andhra Pradesh

Vs

M. Chandra Sekhar

Civil Appeals Nos. 1299 to 1303 (NT) of 1973

(R. S. Pathakm, V. D. Tulzapurkar JJ)

04.12.1984

JUDGMENT

PATHAK J. -

1. These appeals by special leave are directed against the judgment of the High Court of Andhra Pradesh disposing of a reference under sub-section. (1) of Section 256 of the Income-tax Act,

1961, on the following questions of law :

> "1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in concluding that the charging of interest indicated that the Income-tax Officer was satisfied that there was sufficient cause for delay in filing the return of income ?
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> 2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in concelling the penalties levied under Section 271(1)(a) ?

2.The respondent assessee is a partner in the firm, M/s Manik Rao & Brothers. He filed voluntary returns for the assessment years 1959-60, 1960-61, 1961-62 and 1962-63, all on August 2, 1963. The return for the assessment year 1963-64 was filed on August 2, 1964. On account of the delay in filing the returns the Income Tax Officer treated the assessee as being in default and imposed penalties under clause (a) of sub-section (1) of Section 271 of the Act. In appeal before the Appellate Assistant Commissioner of Income Tax the assessee contended that as the returns had been furnished before the end of four years from the end of the relevant assessment years, that is to say, the period prescribed by sub-section (4) of Section 139 of the Act, he was not liable to any penalty. It was also pointed out by the assessee that interest had been levied under clause (iii) of the proviso to sub-section (1) of Section 139 and, therefore, no question arose of imposing a penalty. Both the contentions were rejected by the Appellate Assistant Commissioner. In second appeal before the Income Tax Appellate Tribunal the assessee raised substantially the same contentions. The Appellate Tribunal took the view that in cases falling under sub-section (1), sub-section (2) and sub-section (4) of Section 139 the Income Tax Officer was empowered to grant time for filing a return, and on such time being granted the assessee would be liable to pay interest. It pointed out that the assessee had in fact given his reasons for the delay in filing the returns "both for the purpose of levy of interest under clause (1) of Section 139 and also the levy of penalty under clause (a) of sub-section (1) of Section 271". It held that as the Income Tax Officer had livied interest up to the date of the filing of the returns it must be presumed that the Income Tax Officer had extended the time for filing the returns after satisfying himself that it was a case for extension of time. The

presumption was founded on the principle that an Officer entrusted with a judicial or quasi-judicial duty must be presumed to have discharged his duties in a proper and bona fide manner. The Appellate Tribunal allowed the appeals and cancelled the penalties.

3.At the instance of the Commissioner of Income Tax, the Appellate Tribunal made a reference to the High Court of Andhra Pradesh. The High Court held that the Appellate Tribunal was justified in relying upon the presumption that official acts had been regularly performed, and that therefore it must be presumed that the Income Tax Officer had extended the time upon grounds made out by the assessee, because otherwise the Income Tax Officer could not have charged interest. Holding that no penalty was leviable in the circumstances, the High Court answered the reference in favour of the assessee.

4.To appreciate the true scope of the question referred, it is necessary to understand the scheme enacted in Section 139 of the Income Tax Act, 1961. Broadly, the scheme envisages a voluntary return by the assessee under sub-section (1) of Section 139, a return consequent upon a notice by the Income Tax Officer under sub-section (2) of Section 139 and a return in the circumstances mentioned in sub-section (4) of Section 139. We are not concerned here with a return under sub-section (3) of Section 139 disclosing a loss nor are we concerned with a revised return under sub-section (5) of Section 139 In the case of a voluntary return, sub-section (1) of Section 139 prescribes the period within which such returns must be filed. Where no return can be filed within the prescribed period, the assessee is entitled to apply to the Income Tax Officer for extending the date for furnishing the return. The Income Tax Officer is empowered to extend the date in his discretion. In a case covered by clause (i) of the proviso to sub-section (1) of Section 139 the period may be extended up to September 30, of the assessment year without charging any interest, and in a case covered by clause (ii) of the proviso the period may be extended upto December 31 of the assessment year similarly without charging any interest. But where the period is extended beyond the dates mentioned in clauses (i) and (ii), then under clause (iii), the assessee is liable to pay interest from October 1 or January 1, as the case may be, of the assessment year to the date of the furnishing of the return on the amount of tax payable on the total income reduced by the advance tax paid and any tax deducted at source. Similarly, in the case of a return furnished under sub-section (2) of Section 139 the Income Tx Officer has power to extend the date for furnishing the return subject to payment of interest in the circumstances set forth in relation to voluntary returns under sub-section (1) of Section 139. Where, however, the assessee does not furnish a return within the time allowed to him under sub-section (1) or sub-section (2) of Section 139 then before any assessment is made, he may, under sub-section (4) of Section 139, furnish a return for any previous year at any time before the end of four assessment years from the end of the assessment year to which the return relates, and in that event the provisions of sub-clause. (iii) of the proviso to sub-section (1) of Section 139 relation to payment of interest would apply to the case. Sub-section (8) of Section 139 was inserted by the Finance Act, 1963 with effect from April 28, 1963. It declared that notwithstanding anything contained in clause (iii) of the proviso to sub-section (1) of Section 139, it was open to the Income Tax Officer, in certain prescribed cases and circumstances, to reduce or waive the interest payable by any person under any provision of Section 139. It may be noted that the language of sub-section (8) of Section 139 suffered material change with effect from April 1, 1971. 5.Now, it will be apparent that delay in filing a return of income results in the postponement of payment of tax by the assessee resulting in the State being deprived of a corresponding amount of revenue for the period of the delay. It seems that in order to compensate for the loss so occasioned Parliament enacted the provision for payment of interest. It is apparent also from the language of clause (iii) of the proviso that interest becomes payable only upon the Income Tax Officer acting on an application made by the assessee for the purpose and extending the date for furnishing the return.

At the relevant time the proviso to sub-section (1) of Section 139 read :

> "Provided that, on an application made in the prescribed manner, the Income Tax Officer may, in his discretion, extend the date for furnishing the return -
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> (i) in the case of any person whose total income includes any income from business or profession the previous year in respect of which expired on or before the 31st day of December of the year immediately preceding the assessment year, and in the case of any person referred to in clause (b), up to a period not extending beyond the 30th day of September of the assessment year without charging any interest;
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> (ii) in the case of any person whose total income includes any income from business or profession the previous year in respect of which expired after the 31st day of December of the year immediately preceding the assessment year, up to the 31st day of December of the assessment year without charging any interest; and
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> (iii) up to any period falling beyond the dates mentioned in clauses (i) and (ii), in which case, interest at nine per cent. per annum shall be payable from the 1st day of October or the 1st day of January, as the case may be, of the assessment year to the date of the furnishing of the return -
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> (a) in the case of a registered firm or an unregistered firm which has been assessed under clause (b) of Section 183, on the amount of tax which would have been payable if the firm had been assessed as an unregistered firm, and
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> (b) in any other case, on the amount of tax payable on the total income reduced by the advance tax, if any, paid or by any tax deducted at source, as the case may be.

It is only where the Income Tax Officer extends the time for furnishing the return beyond September 30, or December 31, as the case may be, that interest becomes payable.

6.Now the contention on behalf of the Revenue is that there is no material to warrant the finding that an application had been made by the assessee for extension of time and that upon such application, the Income Tax Officer extended the time. It is urged that the imposition of interest does not warrant the assumption that an application for extension of time was made by the assessee and allowed by the Income Tax Officer. The proviso to sub-section (1) of Section 139 requires the assessee to make an application for extension of time in the prescribed manner, and the prescribed from of the application set forth is From No. 6 pursuant to Rule 13 of the IT Rules, which requires the assessee to state the reasons on which the extension of time is sought. All this, learned counsel contends, contemplates that the Income Tax Officer should apply his mind to the relevant material before him before deciding, in his discretion, whether the time should be extended. Learned counsel, however, has not been able to satisfy us why the presumption raised by the Appellate Tribunal, and endorsed by the High Court, should not prevail. It cannot be disputed that the Income Tax Officer could extend the date for furnishing the return in respect of each assessment year. It was open to him to do so under the statute and he was entitled to charge interest only on the basis that the extended period fell beyond September 30, or December 31, as the case may be. In the ordinary course of things, the Income Tax Officer could have extended the date only upon being satisfied that there was good reason for doing so, and that would have been on the grounds pleased by the assessee. We consider that in the circumstances of this case a presumption could validly be raised that all that was

done. No attempt was made by the Revenue to show that the Income Tax Officer acted arbitrarily and contrary to the procedure envisaged by the statue. The Appellate Tribunal considered the matter carefully and found circumstances on the record in favour of raising the presumption. The High Court approved of the approach adopted by the Appellate Tribunal and did not find it contrary to law. We do not see any reason to differ from the opinion expressed by the High Court.

7.In the instant case, the extension was a matter falling within sub-section (1) of Section 139, and the returns furnished by the assessee must be attributed to that provision. They were not returns furnished within the contemplation of sub-section (4) of Section 139. Therefore, the decision of the Gujarat High Court in Addl. C.I.T. v. Santosh Industries ((1974) 93 ITR 563 (Guj)), of the Karnataka High Court in M. Nagappa v. I.T.O. ((1975) 99 ITR 32 (Kant)), of the Andhra Pradesh High Court in Poorna Biscuit Factory v. C.I.T. ((1975) 99 ITR 41(AP)), of the Orissa High Court in C.I.T. v. Gangaram Chapolia ((1976) 103 ITR 613 (Ori)), and of the Allahabad High Court in Metal India Products v. C.I.T. ((1978) 113 ITR 830 : AIR 1978 All 535 : 1978 All LJ 1129 : 1978 Tax LR 1108), cannot be invoked in the instant case. They are cases dealing with a return filed in the circumstances mentioned in sub-section (4) of Section 139.

8.Our attention has also been drawn to the decision of this Court in C.I.T. v. Kulu Valley Transport Co. P. Ltd. ((1970) 77 ITR 518 : (1970) 2 SCC 192 : AIR 1970 SC 1734). That was a case where the returns were filed under sub-section. (3) of Section 22 of the Indian I.T. Act, 1922. They were not returns furnished within the time allowed by or under sub-section (1) or sub-section (2) of Section 22 of that Act. Accordingly, that case also need not be considered.

9.In the result, we uphold the answer returned by the High Court to the first question raised in the reference.

10.The second question raises the point whether the Appellate Tribunal was justified in cancelling the penalties levied under clause (a) of sub-section (1) of Section 271. That provision reads :

> 271(1) If the Income Tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that any person -
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> (a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of Section 139 or by notice given under sub-section (2) of section 139 or Section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of Section 139 or by such notice, as the case may be, or
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> #(b) * * *(C) * * *##
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> he may direct that such person shall pay by way of penalty, -
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> #(i) * * *(ii) * * *(iii) * * *##

It is clear that penalty is attracted if the Income Tax Officer is satisfied that the assessee has, without reasonable cause, failed to furnish the returns "within the time allowed". The time allowed for furnishing a voluntary return is the time specified in sub-section (1) of Section 139. We have seen that the proviso to that sub-section empowers the Income Tax Officer to extend the date for furnishing the return. It was open to Parliament to specify by express enactment the date by which a return must be filed, and also confer power on the Income Tax Officer to extend the date for doing

so. When the Income Tax Officer extends the date, he does so in the exercise of authority conferred by the statute, and the additional time available to the assessee consequent upon such extension is, for all relevant purposes, of the same character and as effective as the statutory period specifically enacted by Parliament. For the purpose of furnishing a return, it constitutes an integral part of the time allowed for furnishing a return. Therefore, where the Income Tax Officer extends the date, then all the time up to that date is the time allowed for furnishing the return. The additional period consequent upon such extension falls within the expression "the time allowed" in clause (a) of sub-section (1) of Section 271. That being so, the conclusion must follow that the penalty provision does not come into play at all.

11.In our opinion, the High Court was right in answering the second question also in favour of the assessee.

12.We express our agreement with the opinion of the High Court on both the questions referred to it. Accordingly, these appeals fail and are dismissed with costs.

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