M/S. Ganesh Dass Sreeram and Others

Vs

Income Tax Officer, 'A' Ward, Shillong and Others

Civil Appeals Nos. 1032-36 of 1973

(Ranganath Misra, M. M. Dutt JJ)

30.10.1987

JUDGMENT

DUTT, J. –

1. The appellants, who are all registered firms within the meaning of Section 2(39) of the Income Tax Act, 1961, hereinafter referred to as 'the Act', have preferred these appeals against the judgments of the Gauhati High Court overruling the challenge of the appellants as to the legality of the interest charged by the Income Tax Officer for the delayed filing of returns and also as to the constitutional validity of sub-section (4) of Section 139 of the Act, as it stood before April 1, 1971.

2. The relevant provisions of Section 139, as it stood prior to April 1, 1971, are as follows :

> 139(1) Every person, it his total income....during the previous year exceeded the maximum amount which is not chargeable to income tax, shall furnish a return of his income.....
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> (a) in the case of every person.....before the expiry of six months from the end of the pervious year...,or before the 30th day of June of the assessment year, whichever is later;
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> (b) in the case of every other person, before the 30th day of June of the assessment year :
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> 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 9 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 -

(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

(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.

(2) In the case of any person who, in the Income Tax Officer's opinion, is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income Tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided that on an application made in the prescribed manner the Income Tax Officer may, in his discretion, extend the date for the furnishing of the return, and when the date for furnishing the return, whether fixed originally or on extension, falls beyond the 30th day of September or, as the case may be, the 31st of December of the assessment year, the provisions of sub-clause (iii) of the proviso to sub-section (1) shall apply.

(4) Any person who has not furnished a return within the time allowed to him under sub-section (1) or sub-section (2) may, before the assessment is made, furnish the 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 returns relates, and the provisions of sub-clause (iii) of the proviso to sub-section (1) shall apply in every such case.

3. In all these cases, it is not disputed that no application for extension of time to file returns was made by the appellants for the relevant assessment years. The returns were submitted before the assessment was made and also before the end of the four assessment years as mentioned in sub-section (4) of Section 139 of the Act. The Income Tax Officer assessed the appellants under Section 143(3) of the Act and determined the total incomes of the appellants and the amounts of tax payable by them. In view of sub-section (4) of Section 139, the Income Tax Officer also added to the amount of tax interest calculated at the rate of 6 per cent per annum on the amount of tax which would have been payable if the firms had been assessed as unregistered firms. Being aggrieved by the charging of interest under sub-section (4) read with clause (iii)(a) of the proviso to sub-section (1) of Section 139 of the Act, the appellants filed writ petitions before the Gauhati High Court, challenging the charging of interest and the validity of sub-section (4) read with clause (iii)(a) of the proviso to sub-section (1) of Section 139 of the Act as violative of Article 14 of the Constitution. The Gauhati High Court, as stated already, overruled the challenge and dismissed the writ petitions except that some writ petitions were allowed in part only as the High Court directed the Income Tax Officers to take into account the advance tax paid by the assesses before calculating the interest. Hence these appeals.

4. The first contention made on behalf of the appellants is that it is clear from the provisos to sub-sections (1) and (2) of Section 139 of the Act that unless an application is made for extension of the date for furnishing the return, the question of charging any interest on the amount of tax does not at all arise. A similar contention was made before the High Court by the appellants, but the High Court overruled the same.

5. Much reliance has been placed on behalf of the appellants on an observation of this Court in CIT V. M. Chandra Sekhar [(1985) 151 ITR 433 : (1985) 1 SCC 283 : 1985 SCC (Tax) 85]. In that case, this Court has observed that 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, the interest becomes payable. The said observation has been made by this Court relating to clause (iii) of the proviso to sub-section (1) of Section 139 of the Act while considering the question whether charging of interest indicated that the Income Tax Officer was satisfied that there was sufficient cause for the delay in filing the return of income and whether the cancellation of the penalties levied under Section 271(1)(a) of the Act was justified. Nothing has, however, been said by this Court in respect of sub-section (4) of Section 139 of the Act.

6. Sub-section (4) is a substantive provision and it does not provide for making an application to the Income Tax Officer for the purpose of extension of the date for the furnishing of the return. What is provided in sub-section (4) is that even through a person does not furnish the return within the time allowed to him under sub-section (1) or sub-section (2), yet he may furnish the same before the end of the four assessment years concerned.

7. The substantive provision of sub-sections (1) and (2) of Section 139 specify the time within which the return has to be filed. The provisos to sub-sections (1) and (2) confer power on the Income Tax Officer to extend the date for filing the return on an application in that regard made by the assessee. So, it is clear that the expression 'time allowed' in sub-section (4) of Section 139 is not confined only to the extension of time granted by the Income Tax Officer, but also to the time originally fixed for the filing of returns under sub-sections (1) and (2) of Section 139 of the Act.

8. There may be two types of cases for the late filing of returns, namely, (1) the assessee after getting the date extended by the Income Tax Officer under sub-section (1) or sub-section (2) of Section 139 of the Act, does not file the return within the extended date, but files the same before the end of four assessment years concerned and (2) the assessee without filing any application for extension of time, files the return beyond the period mentioned in sub-section (1) or sub-section (2) but before the end of four assessment years in question. In either case, the provision of clause (iii) of the proviso to sub-section (1) of Section 139 will apply. In other words, the Income Tax Officer will be entitled to charge interest on the amount of tax in accordance with the provision of clause (iii) of the proviso to sub-section (1) of Section 139. Thus, where the time has been extended by the Income Tax Officer on an application made in that regard by the assessee and the assessee does not file the return within the time allowed and where no such application has been made by the assessee, but the return is filed by him beyond the time allowed, but before the end of the four assessment years concerned, in either case, the Income Tax Officer will be entitled to charge interest in accordance with the provision of clause (iii) of the proviso to sub-section (1) of Section 139 of the Act. There is, therefore, no substance in the contention of the appellants that as the appellants had not made any application praying for the extension of time for the filing to returns, the Income Tax Officer has no authority to charge interest under the provision of clause (iii) of the proviso to sub-section (1) of Section 139 of the Act.

9. The next question that requires consideration relates to the validity of sub-section (4) read with clause (iii)(a) of the proviso to sub-section (1) of Section 139. It is submitted by the learned counsel appearing on behalf of the appellants that as, in view of the late filing of the returns, there is postponement of the payment of tax and the revenue suffers loss on account of delayed payment of tax, the interest when levied takes the character of penalty. This contention need not detain us long, for it has already been decided by this Court in Central Provinces Manganese Ore Co. Ltd. v. CIT [(1986) 160 ITR 961 : (1986) 3 SCC 461 : 1986 SCC (Tax) 601], that interest is levied by way of compensation and not by way of penalty. In Chandra Sekhar case [(1985) 151 ITR 433 : (1985) 1 SCC 283 : 1985 SCC (Tax) 85] this Court also has taken a similar view. The High Court, however, has taken the view that the interest charged partakes also of a penal character. In expressing that view, the High Court has placed reliance upon a decision of this Court in Jain Brothers v. Union of India [(1970) 77 ITR 107 : (1969) 3 SCC 311]. In that case, this Court was mainly considering a challenge to Section 271(2) of the Act, which is a penal provision, on the ground of contravention of Article 14 of the Constitution. The question whether charging of interest under the proviso to Section 139(1) of the Act was in the nature of penalty or not, was not considered by this Court. Indeed, the subject matter was different from that with which we are concerned. In view of the decisions of this Court in Chandra Sekhar case [(1985) 151 ITR 433 : (1985) 1 SCC 283 : 1985 SCC (Tax) 85] and in the case of Central Provinces Manganese Ore Co. Ltd. [(1986) 160 ITR 961 : (1986) 3 SCC 461 : 1986 SCC (Tax) 601], we hold that the charging of interest did not become transformed to penalty.

10. It is urged on behalf of the appellants that all the assessees who are charged with interest for the late filing of returns, should be classified in one and the same category inasmuch as they are similarly situated, but sub-section (4) read with clause (iii) of the proviso to sub-section (1) of Section 139 of the Act has without any reasonable justification placed the registered firms in a separate category inasmuch as for the late filing of returns by such firms they are saddled with interest to be calculated on the amount to tax payable by them as unregistered firms. It is submitted that such separate classification of the registered firms for the purpose of payment of interest under Section 139, does not bear any nexus to the object sought to be achieved by the section and, accordingly, the provision of sub-section (4) read with clause (iii)(a) of the proviso to sub-section (1) of Section 139 of the Act is discriminatory and violative of the provision of Article 14 of Constitution and, as such, is void.

11. In support of the contention, the appellants have placed much reliance upon a decision of the Karnataka High Court in M. Nagappa v. ITO [(1975) 99 ITR 33 (Kar)]. In that case, a learned Single Judge of the Karnataka High Court has struck down as void the provision of sub-section (4) read with clause (iii)(a) of the proviso to sub-section (1) of Section 139. The reason that weighed with the learned judge is that the loss suffered by the government which is sought to be compensated by the legislative measure should be the same in all cases, irrespective of the fact that the assessee who is responsible for it is a registered firm or any other kind of assessee. If that is the case, then the amount claimed by way of interest should be directly correlated to the amount of tax withheld by the assessee without reference to the kind of assessee concerned in a given case. It is observed that the object of levy of interest being just reimbursement of what the government would lose by delayed payment of tax resulting from the delayed filing of the return, it is clear that the levy of interest in the case of a registered firm on the tax which would have been payable if the firm had been assessed as an unregistered firm, is outside the said object. Accordingly, it has been held that Section 139(4) to the extent it required a registered firm to pay interest at the specified rate on the tax assessed as if it were an unregistered firm, whenever the registered firm did not file the return within the specified time, was violative of Article 14 of the Constitution and is, therefore,

void. That decision of the learned Single Judge has been upheld by a Division Bench of the Karnataka High Court and is seen reported in Addl. CIT v. Mahadeshwara Lorry Service [(1981) 129 ITR 516 (Kar)].

12. The Karnataka High Court, Before holding that provision of sub-section (4) of Section 139 read with clause (iii)(a) of the proviso to sub-section (1) of Section 139 of the Act as violative of Article 14 of the Constitution, has not considered the reason why, when a registered firm submits a return beyond time, it is charged with interest calculated on the amount of tax which would have been payable if the firm had been assessed as an unregistered firm. It is because of certain privileges which have been conferred on a registered firm. One of the privileges is that the firm is considered as an assessable unit and is taxed at a reduced rate and the partners are assessed on their respective shares in the income of the firm. This privilege which has been conferred on a registered firm by the Act, is not available to an unregistered firm. The legislature is, however, competent to withhold any of the privileges conferred on a registered firm if it violates any of the provisions of the Act. A registered firm is required to file its return within the time as prescribed by the Act. Clause (iii)(a) of the proviso to Section 139(1) read with sub-section (4) of Section 139 in effect only provides for the withdrawal of the privilege of the registered firm to be assessed at a reduced rate because of its non-compliance with the provisions of sub-sections (1) and (2) of Section 139 of the Act. In other words, the registered firm is treated as an unregistered firm for purposes of quantification of interest.

13. The contention of the appellants that by treating the registered as unregistered firms for the charging of interest, the legislature has placed the registered firms in a separate category is not at all comprehensible. On the other hand, by treating the registered firms as unregistered firms, the legislature has avoided the discrimination that would have been there if the registered firms were not so treated for the purpose of charging of interest. In other words, if the registered firms had been charged with interest on the amount of tax assessed at a reduced rate for the late filing of the returns, there would have been discrimination between registered firm and unregistered firms. When a registered firm and an unregistered firm commit the same default in filing returns beyond the time allowed under sub-sections (1) and (2) of Section 139 of the Act, it would be unreasonable and unjust to charge two different rates of interest - one at a reduced rate for the registered firm and the other at a higher rate for the registered firm. So, in our opinion, Section 139(4) read with clause (iii)(a) to the proviso of Section 139(1) of the Act, as it stood prior to April 1, 1971, has placed the registered firms and the unregistered firms on the same footing as, for the purpose of interest, they are similarly situated.

14. Dr. Gouri Shanker, learned counsel appearing for the revenue, has pointed out to us that except the Karnataka High Court, other High Courts, namely, Madras High Court, Gujarat High Court, Madhya Pradesh High Court, Punjab and Haryana High Court and the Calcutta High Court in Mahendrakumar Ishwarlal & Co. v. Union of India [(1973) 91 ITR 101 (Mad)], since affirmed on a appeal reported in Mahendrakumar Iswarlal & Co. v. Union of India [(1974) 94 ITR 65 (Mad)]; Chhotalal & Co. v. ITO [(1976) 105 ITR 230 (Guj)]; Jiwanmal Hospital v. ITO [(1979) 119 ITR 439 (MP)]; Hindustan Steel Forgings v. CIT [(1980) 121 ITR 793 (Punj)] and Mohanlal Soni v. Union of India [(1983) 143 ITR 436 (Cal)], respectively have taken the view that treating of registered firms as unregistered firms for the purpose of charging of interest for the late filing of returns cannot be said to be arbitrary and violative of Article 14 of the Constitution. The view expressed in these decisions, in our opinion, is correct. As has been Noticed already, the Karnataka High Court did not consider the question of withholding of the privileges conferred on the registered firm on their default in filing returns within the time allowed under sub-sections (1) and

(2) of Section 139 of the Act, so that they may be treated on equal footing with unregistered firms making the same default. In the circumstances, no discrimination has been made between a registered firm and an unregistered firm and, accordingly, the provision of sub-section (4) of Section 139 read with clause (iii)(a) of the proviso to sub-section (1) of Section 139 of the Act is not violative of Article 14 of the Constitution and is quite legal and valid. The decision of the Karnataka High Court in Nagappa case [(1975) 99 ITR 33 (Kar)], as affirmed on appeal by the Division Bench of that High Court [(1981) 129 ITR 516 (Kar)], insofar as it declares the said provision as ultra vires Article 14 of the Constitution, is erroneous.

15. Before we part with these appeals, we think we should clarify one situation, namely, where the advance tax duly paid covers the entire amount of tax assessed, there is no question of charging the registered firm with interest even though the return is filed by it beyond the time allowed, regards being had to the fact that payment of interest is only compensatory in nature. As the entire amount of tax is paid by way of advance tax, the question of payment of any compensation does not arise.

16. In C.A. No. 1035 of 1973, it appears that total tax for the assessment year 1968-69 was assessed at Rs. 16,288. The assessee paid advance tax amounting to Rs. 39,018 in three instalments on September 25, 1967, January 24, 1968 and March 2, 1968. It is apparent that the amount of advance tax paid by the assessee fully covered the amount of tax payable by it. In spite of that, the Income Tax Officer charged the assessee for the said assessment year a sum of Rs. 14,233 as interest under Section 139 of the Act for the delayed filing of the return. As has been observed earlier, when the amount of tax had already been paid in the shape of advance tax, the question of payment of compensation by way of interest does not arise and the Income Tax Officer was not, therefore, justified in charging interest. The assessee is, therefore, entitled to get refund of the amount paid by way of interest for the said assessment year. The Income Tax Officer is directed to refund to the assessee the amount paid on account of interest.

17. In the result, C.A. No. 1035 of 1973 is allowed and the remaining appeals are dismissed. There will, however, be no order as to costs in any of these appeals.

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