

**C. Subramani Vs. Assistant Commissioner of Income-tax and Another**

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**Court :** Karnataka

**Decided On :** Sep-10-1992

**Reported in :** [1993]202ITR347(KAR); [1993]202ITR347(Karn)

**Judge :** S. Rajendra Babu, J.

**Acts :** [Income Tax Act, 1961](#) - Sections 139(8) and 273A and A(3)

**Appeal No. :** W.P. No. 10584 of 1991

**Appellant :** C. Subramani

**Respondent :** Assistant Commissioner of Income-tax and Another

**Advocate for Def. :** H. Raghavendra Rao, Adv.

**Advocate for Pet/Ap. :** S. Ganesh Rao, Adv.

**Judgement :**

S. Rajendra Babu, J.

1. The petitioner is an assessee under the Income-tax Act, 1961. He filed applications as contemplated under section 273A of the Act on May 14, 1990, and May 1, 1990, seeking reduction or waiver of interest leviable under sections 139(8), 215 and 217 of the Act. All the applications were taken together for consideration by the Commissioner and he, by a common order dated March 8, 1981, disposed of the applications. For the year 1985-86, the Commissioner found that the assessee satisfied the conditions and, therefore, granted waiver of interest as enumerated therein. Thereafter, for the year 1986-87, the Commissioner took the view that only the first disclosure is eligible for waiver and those applications were not considered. Obviously, this latter part of the order relating to 1986-87 was made on the basis of sub-section (3) of section 273A of the Act. The said sub-section reads as follows :

'273A. (3) 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.....'

Sub-section (3) provides that an order to be made under section 273A may pertain to one or more than one assessment year. But, once that power is exercised, the assessee will not be entitled to any relief in relation to another assessment order after making such an order. In the decision in Ram Sarandas Har Swaroop Mal v. CIT : [1990]186ITR503(All) , it is held that a common application filed for three different years was disposed of by a common order and in that order, the Commissioner confined the relief to only one year and, in respect of the other two years, he refused to grant the relief. The Allahabad High Court, explaining the scope of section 273A(3), stated that when the conditions are fulfilled, it is certainly open to the Commissioner to waive or reduce the interest as the case may be. But, once that power is exercised, thereafter it should not be open to

him to exercise that power again after making such an order. In the present case, although applications had been filed on different dates or separately, still the relief sought for by the petitioner was considered together by a common order and the bar under sub-section (3) is only attracted only after the order is made and not prior to that. When that is so, it was not open to the Commissioner to have refused to consider the application filed by the petitioner for the assessment year 1986-87. Further, learned counsel for the Department submitted, relying upon the decision of this court in CIT v. Mansaram Sukhdev Gunj : [1993]201ITR1(KAR) (W. R. No. 1339 of 1992, dated July 27, 1992), that such a plea would arise only where one application is made and not where different applications were made on different dates, but that factor has no relevance at all in the present case. Although, in the case referred to by learned counsel, the facts were as stated by him, the principle upon which the whole decision is based is that once the power is exercised by the Commissioner, that power cannot again be exercised as available under section 273A. Here the power had not been exercised prior to the impugned order. Therefore, in the impugned order itself, he could have considered the relief sought for by the petitioner in the two different applications. There is no particular significance in filing a common application. Even if a common application is filed for different years, that can be taken to be different applications and even when different applications are filed, when they are considered together by a common order, no particular distinction can be made on that basis. In that view of the matter, the distinction sought to be made by learned counsel for the Department has no bearing on the case.

2. In the circumstances, this petition is allowed. Respondent No. 2 is directed to consider the application filed by the petitioner for the assessment year 1986-87 also. The order impugned herein shall stand quashed to the extent it has disallowed the application filed by the petitioner for the year 1986-87 and the matter shall stand remitted to the Commissioner for fresh consideration in accordance with law. Rule made absolute accordingly.