

Mirajuddin Vs. Central Board of Direct Taxes and ors.

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Court : Delhi

Decided On : May-21-2002

Reported in : (2002)175CTR(Del)561

Appeal No. : Civil Writ Petn. No. 1649 of 1980 21 May 2002 A.Y. 1970-71 to 1974-75

Appellant : Mirajuddin

Respondent : Central Board of Direct Taxes and ors.

Advocate for Pet/Ap. : O.P. Dua with Mrs. Ritu Mehta, *for the assessed R.D. Jolly & Ms. Rashmi Chopra, for the Revenue*

Judgement :

Order

Dal Veer Bhandari, J.

The petitioner in this petition has prayed that the order, dt, 28-6-1978, passed by Commissioner be set aside. He has also prayed that the orders, dated 27-3-1979, and 27-9-1980, passed by Income Tax Officer and Central Board of Direct Taxes respectively be set aside.

2. The controversy involved in the entire case is rather narrow. The petitioner filed a petition under section 273A before Commissioner concerning assessment years

1970-71 to 1974-75 praying for waiver/reduction of penalties livable under section 271(1)(a) and interest under section 139(8). It is not disputed that the returns were filed voluntarily and full disclosure was made. It is also incorporated in the order of the Commissioner that the petitioner has cooperated in completion of the assessments and paid the taxes in full. The learned Commissioner mentioned in his order that although the conditions envisaged in section 273A are fulfilled but he declined to waive the penalties and interest in full since the delay in filing the returns is inordinate. The findings of the learned Commissioner are contrary to the settled position of law as crystallised in *Jaswant Rai & Anr. v. CBDT & Ors.* . Their Lordships of the Supreme Court observed 'that the power under section 271(4A) is coupled with a duty to do justice and the Commissioner is under statutory obligation to exercise the power in favor of an assessed which has fulfilled all the conditions of the provisions. In deciding such a matter, therefore, he cannot take into account factors or reasons which are invalid or extraneous to the said provisions. The principal condition for grant of relief under the said provision is that the assessed should have voluntarily and in good faith made full disclosure of his income prior to the detection of the same and such disclosure could be made even otherwise than in the course of a return by submitting a petition to the Commissioner.'

The court further observed that the levy of penalty under section 271(1)(c) by itself would not be a circumstance to take it out of the purview of section 271(4A) of the Act.

3. Reverting to the circumstances of this case, it is not disputed that the returns were filed voluntarily and full disclosure was made and the entire tax was also paid.

In this view of the matter, the order passed by the Commissioner, dated 28-6-1978, cannot be sustained and is accordingly set aside. In view of the decision of this setting aside the judgment of the Commissioner, dated 28-6-1978, the orders passed on 27-3-1979, and 27-9-1980, are accordingly modified to that extent.

No further directions are necessary in this petition and this petition is accordingly disposed of.

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