Dr. P.K.P. Mohammed Vs. Central Board of Direct Taxes and ors.

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Court : Kerala

Decided On : Jun-11-1993

Reported in : (1993)113CTR(Ker)396; [1993]203ITR479(Ker)

Judge : T.V. Ramakrishnan, J.

Acts : Income Tax Act, 1961 - Sections 139(8), 154, 217, 271(1), 273(2), 273A, 273A(1) and 273A(3)

Appeal No. : O.P. No. 4898 of 1989-G

Appellant : Dr. P.K.P. Mohammed

Respondent : Central Board of Direct Taxes and ors.

Advocate for Def. : N.R.K. Nair, Adv.

Advocate for Pet/Ap. : C. Kochunni Nair, Adv.

Judgement :

T.V. Ramakrishnan, J.

1. An important question regarding the scope of the power to reduce or waive penalty, etc., in certain cases conferred on the Commissioner of Income-tax under Section 273A(1) of the Income-tax Act, 1961 (for short, 'the Act'), and the interpretation of Sub-section (3) of that section falls for consideration in this

original petition.

2. The facts relevant are not in dispute and can be stated thus : The petitioner is an assessee on the file of the third respondent, the Income-tax Officer, A-Ward, Kannur. While completing the regular assessment for the assessment years 1978-79 to 1981-82, the third respondent levied interest under Sections 139(8) and 217 of the Act. The petitioner filed a petition under Section 273A of the Act before the second respondent, the Commissioner of Income-tax, Kochi, for waiver of the interest levied for the above four assessment years. The second respondent, as per exhibit P-1 order, dated July 22, 1985, waived the interest under both sections finding that the assessee has before issue of a notice voluntarily filed returns of income disclosing the true income and has paid tax and as such is entitled to waiver of interest imposed under the above sections in full. Subsequently, the third respondent issued notice of proceedings for the imposition of penalty under Sections 271(1)(a) and 273(2)(b) of the Act. On receipt of the notice, the petitioner submitted exhibit P-2 petition dated March 20, 1986, praying for waiver of penalty imposable under Sections 271(1)(a) and 273(2)(b) of the Act. That petition was rejected by the second respondent by exhibit P-3 order dated August 3, 1987, on the ground that he had already exercised the power conferred on him under Section 273A(1) of the Act and as such he has no power to pass a second order in exercise of the said power. The total penalty imposed under the two sections was Rs. 10,694. On receipt of exhibit P-3 order, the petitioner filed exhibit P-4 petition dated May 4, 1988, under Section 154 of the Act before the second respondent alleging that there are certain mistakes apparent on the record. It was alleged that, while taking the view that there is no power to pass asecond order in favour of the petitioner under Section 273A(1) of the Act, the second respondent has overlooked the scope and effect of the provisions contained in Sub-section (3) of Section 273A of the Act and that it constitutes an error apparent on the face of the record. The said subsection only prohibits the second respondent from granting relief under Sub-section (1) in favour of a person in relation to any other assessment year or years after granting relief under that Sub-section once in respect of any one or more years by an earlier order. The relevant provision in Sub-section (3) never prevents a further order being passed in relation to the same assessment year or years for which he has already been granted one of the

benefits conferred under Section 273A(1) of the Act. On a consideration of the petition, the second respondent, however, rejected the petition as per exhibit P-5 order dated June 2, 1988, stating that there is no mistake apparent on the face of the record and that it is doubtful whether he can modify his predecessor's order dated August 3, 1987, on merits. Against exhibit P-5 order, the petitioner submitted exhibit P-6 petition dated June 7, 1988, to the first respondent, the Central Board of Direct Taxes (Income-tax). In exhibit P-6 petition, the petitioner prayed that the first respondent may either rectify the order dated August 3, 1987, or set aside the above order and direct fresh consideration of the case by the second respondent. The first respondent has also declined to interfere with the matter taking the view that an order passed under Section 273A(1) of the Act is final and cannot be called into question before any court or authority in view of Sub-section (5) of Section 273A of the Act and as such no interference is called for. Aggrieved by the orders passed by the statutory authorities, the petitioner has preferred this original petition challenging the sustainability of the above orders.

3. The second respondent has filed a counter-affidavit taking up the contention that, under Section 273A(1) of the Act, only one order can be passed in favour of an assessee and no further order can be passed under the said Sub-section in favour of the same assessee. On the above basis, it was submitted that the orders passed by the authorities are perfectly justifiable and no interference is called for in this original petition in exercise of the extraordinary jurisdiction vested in this court under Article 226 of the Constitution of India. It was also contended that the view taken by the second respondent while disposing of the petition filed under Section 154 of the Act to the effect that there is no apparent error on the record is also justifiable in the circumstances of the case.

4. Learned counsel for the petitioner has submitted that, being a provision in a fiscal statute, the provision contained in Sub-section (3) shouldbe construed strictly and in the absence of any express prohibition from claiming further relief in respect of the assessment year or years in relation to which already an order has been passed by the second respondent under Sub-section (1) of Section 273A of the Act, the provision should be interpreted in such a manner as to enable the beneficiary of the provision to claim the reliefs conferred by the section from time

to time. When a power is conferred on an authority by a statute, it must be considered as one exercisable from time to time as the occasion requires as provided in Section 14 of the General Clauses Act, 1897, unless a different intention appears from the statute which conferred the power on the concerned authority. There is nothing in the section which either expressly or impliedly indicates a different intention. Secondly, it was submitted that the view taken by the second respondent that he could pass only one order under Sub-section (1) of Section 273A and, on passing an order, the power in its entirety is exhausted once and for all can be held to be true only in cases where the second respondent, while passing the first order, has actually or impliedly exercised his powers under Sub-section (1) in regard to all the matters mentioned in Clauses (i) to (iii) of that Sub-section. The fact that power to reduce or waive interest and penalties imposed or imposable under various sections have been given compendiously in one Sub-section of the section may not be a sufficient reason to hold that, when once the power conferred in relation to one matter is exercised, that may preclude the second respondent from exercising the powers in relation to the rest of the matters in respect of which he has not exercised his power and was not even called upon to exercise his power. So long as the second respondent has not purported to exercise the power in relation to all the matters mentioned in the Sub-section, he cannot be considered to have exhausted all the powers vested in him by such partial exercise of power. With reference to the facts of the case, learned counsel submitted that, in the first instance, the second respondent was called upon to exercise his power only in the matter of reducing or waiving the interest imposed under Sections 139(8) and 217 of the Act and not in relation to any of the other matters mentioned in Clauses (ii) and (iii) of the Sub-section. At the time when exhibit P-1 order was passed, the penalties under Sections 271(1)(a) and 273(2)(b) were not imposed. It was only when the petitioner came to know about the penalty proceedings and the possibility of imposition of penalty, that the petitioner has filed exhibit P-2 petition for necessary relief. In the circumstances, it was submitted that the rejection of the petition, taking the view that the second respondent has no power to give relief in respect of the penalty imposed and requested to be waived, is unsustainable.

5. In support of the contention that the power conferred on the second respondent under Section 273A(1) can be exercised only once and no second order can be passed in exercise of the power conferred by the said section, learned counsel for the first respondent has strongly relied upon the Division Bench decision of the Allahabad High Court in Ram Sarandas Har Swaroop Mal v. CIT : [1990]186ITR503(All) .

6. In the light of the contentions so raised, the question arising for consideration is whether exhibit P-1 order passed in favour of the petitioner waiving interest imposed under Sections 139(8) and 217 of the Act would preclude the second respondent from passing an order on exhibit P-2 petition exercising once again his power under Section 273A(1) of the Act.

7. Section 273A(1) and (3) read thus :

'273A(1). Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise,--

(i) reduce or waive the amount of penalty imposed or imposable on a person under Clause (i) of Sub-section (1) of Section 271 for failure, without reasonable cause, to furnish the return of total income which he was required to furnish under Sub-section (1) of Section 139 ; or

(ii) reduce or waive the amount of penalty imposed or imposable on a person under Clause (iii) of Sub-section (1) of Section 271 ; or

(iii) reduce or waive the amount of interest paid or payable under Sub-section (8) of Section 139 or Section 215 or Section 217 or the penalty imposed or imposable under Section 273 ;

if he is satisfied that such person--(a) in the case referred to in Clause (i), has, prior to the issue of a notice to him under Sub-section (2) of Section 139, voluntarily and in good faith, made full and true disclosure of his income ;

(b) in the case referred to in Clause (ii), has, prior to the detection by the Income-tax Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars ;

(c) in the cases referred to in Clause (iii), has, prior to the issue of a notice to him under Sub-section (2) of Section 139, or where no suchnotice has been issued and the period for the issue of such notice has expired, prior to the issue of notice to him under Section 148, voluntarily and in good faith made full and true disclosure of his income and has paid the tax on the income so disclosed.

and also has, in all the cases referred to in Clauses (a), (b) and (c), co-operated in any inquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year.

Explanation.--For the purposes of this Sub-section, a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract the provisions of Clause (c) of Sub-section (1) of Section 271.

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.'

8. Sub-section (1) in plain and unambiguous terms confers a very wide power on the second respondent to pass orders in his discretion regarding a number of distinct matters provided in Clauses (i) to (iii) of that subsection. Clause (i) empowers the second respondent to reduce or waive the amount of penalty imposed or imposable on a person under Section 271(1) of the Act. Clause (ii) similarly empowers the second respondent, in his discretion, to reduce or waive the amount of penalty imposed or imposable on a person under Section 271(1)(b) of the Act. Clause (iii) in terms empowers the second respondent, in his discretion, to reduce or waive the amount of interest paid or payable under Sub-section (8) of

Section 139 or Section 215 or Section 217 or the penalty imposed or imposable under Section 273 of the Act. Further, the said Sub-section provides that the second respondent can pass orders in respect of matters enumerated in Clauses (i) to (iii) only after satisfying himself about the fact that a person who claims benefit under Section 273A(1) of the Act fulfils the conditions mentioned respectively in Clauses (a) to (c) of the same Sub-section. The conditions mentioned in Clauses (a) to (c) are conditions prescribed for the exercise of the power conferred on the Commissioner respectively under Clauses (i) to (iii) and they are also distinct and separate. Thus, before passing orders in respect of the different mattersprovided under Clauses (i) to (iii), the second respondent is bound statutorily to satisfy himself as to whether the different conditions mentioned in Clauses (a) to (c) of that Sub-section are duly satisfied by the beneficiary or not. The above scheme of the provisions in Sub-section (1) of Section 273A of the Act would indicate that the power conferred under the said Sub-section actually comprises several distinct powers and is a collection of powers compendiously conferred by one and the same Sub-section. Though the powers conferred are in relation to inter-connected matters, they are distinct and are to be exercised only after satisfying oneself about the fulfilment of the conditions separately indicated in Clauses (a) to (c) of the said Sub-section.

9. Regarding Sub-section (3) of Section 273A of the Act, it will be advantageous to take note of the fact that it only bars a person who has already obtained an order under Sub-section (1) in his favour from claiming any relief under the said Sub-section in relation to any other assessment year or years at any time after the making of such earlier order. In other words, the positive bar is only in the matter of claiming relief under Sub-section (1) of Section 273A of the Act in relation to any other assessment year or years other than the one or more years in respect of which a person has already obtained an order under Sub-section (1) of that section. The section as such does not expressly prohibit a person who has already obtained an order in relation to a particular assessment year or years from claiming any other or further relief under the said Sub-section in respect of the same assessment year or years. In other words, the provision in Sub-section (3) only disentitles a person from claiming once again the various reliefs provided under Clauses (i) to (iii) of Sub-section (1) of Section 273A of the Act, if he had

already enforced his remedies under Sub-section (1) and obtained an order or different orders passed by the second respondent under Sub-section (1) of Section 273A. Sub-section (3) only prohibits a person from claiming the relief or reliefs conferred by that Sub-section repeatedly on more occasions than one.

10. Before going into the merits of the above contentions raised by counsel on both sides, I may observe that, except for the decision referred to by counsel for the first respondent, no other authority was relied upon by either side in support of their contentions. Being the only decision referred to as having relevance in the matter, I may first consider how far the decision is helpful to decide the issue raised in the original petition. It is true that, while construing the provisions in Sub-section (3) of Section 273A of the Act, B.P. Jeevan Reddy C.J. (as his Lordship then was), onbehalf of the Division Bench, has observed that (at page 506 of 186 ITR); 'The true meaning of Sub-section (3) is that the power shall be exercised only once in the case of a given person and not more than once'. The above observation apparently supports fully the contention of the first respondent and as such deserves detailed consideration in the light of the facts and circumstances of the case and the contentions raised by learned counsel for the petitioner. The relevant observations were made in a case where the Income-tax Officer had levied interest under Section 139(8) on the assessee for late filing of returns and also imposed penalties under Section 271(1)(a) of the Act for the assessment years commencing from 1978-79 and ending with 1981-82. The assessee in that case filed an application before the Commissioner for waiver of interest and penalties under Section 273A(1). The Commissioner waived the penalty only for the assessment year 1977-78 and dismissed the application in all other respects on the ground that, under Sub-section (3) of Section 273A, the indulgence granted once was not available for any other assessment year nor for a second time for the same assessment year. The Division Bench found that the view taken by the Commissioner is unsustainable and set aside the order and remanded the matter for fresh consideration in accordance with law and in the light of the observations and directions contained in the judgment. From the facts of the case, it is clear that it is a case where the court was not called upon to consider the question of maintainability of the application for the exercise of the powers conferred under Section 273A(1) of the Act for a second time. There was also no specific

contention raised regarding the exact scope of the power conferred under Section 273A(1) of the Act. The question whether the exercise of power in relation to only one of the several matters mentioned in the three clauses with reference to which power was conferred by the Sub-section would amount to an exercise of power in relation to all the matters provided under all the clauses and would exhaust the entire power vested under the subsection was not a matter specifically considered in the said decision. It was a case where the Commissioner exercised his power only with reference to one year even though the assessee has claimed even at the first instance relief in respect of the four years. That was obviously against the express words contained in the section and was clearly illegal. It was in this context that the Division Bench has made the above observation. Even assuming that the power can be exercised only once, whether the power exercised in relation to one of the matters provided in the various clauses would amount to an actual or implied exercise of the power conferred in respect of the other matters mentioned in the clauses was not at all consideredin the said decision. In the circumstances, I do not think that the observations can be taken as an authority for contending that any order passed under Sub-section (1) would preclude any further or other reliefs being claimed and granted in appropriate cases in respect of the same year or years with reference to which an order has already been passed by the Commissioner in exercise of his power under Sub-section (1) of Section 273A of the Act.

11. On a consideration of the scheme of the provisions contained in Sub-sections (1) and (3) of Section 273A of the Act as indicated above and the rival contentions raised by counsel on both sides, I am inclined to take the view that the power conferred under Section 273A(1) is a power conferred with reference to different matters which is liable to be exercised from time to time by the second respondent on being satisfied that the conditions mentioned in Clauses (a) to (c) of that Sub-section are fulfilled by the beneficiary subject to the further condition that the reliefs in respect of all or any of the matters can be claimed and granted only once in favour of one and the same person and not for a second time. Though conferred compendiously under one Sub-section, it is a power exercisable in relation to various matters either independently or jointly and that the exercise of power in relation to one of the matters mentioned in the different clauses of Sub-section (1)

may not preclude the beneficiary from claiming reliefs in respect of other matter or matters and the second respondent from exercising power in relation to such other matter or matters in respect of which the beneficiary has not actually obtained an earlier order from the Commissioner. The exercise of power with reference to any one or more years in relation to one or more matters in Clauses 0) to (iii) but not in relation to all matters mentioned in Clauses (i) to (iii) may not exhaust the power in its entirety. Such orders passed in relation to one or more matters but not in relation to all the matters can be considered only as orders passed in exercise of part of the power conferred compendiously under the Sub-section and cannot be treated as an order which would exhaust the power conferred by the Sub-section in its entirety. The intention of the Legislature in enacting Sub-sections (1) and (3) of Section 273A of the Act is obviously to confer certain reliefs in respect of the various consequences of certain defaults committed by the assessees in complying with the provisions of the Act for once whether it is for one year or for a number of years. It was with the object of relieving persons of the various consequences of their default in complying with certain requirements of the provisions of the Act subject to certain conditions contained in the section itself that Section 273A of the Act wasenacted. If that is the object of the provision and the intendment of the Legislature, the view which I take in this matter may not go against the said object and intendment. In fact, it will only be in accordance with the said object of the legislation. Moreover, it is a well-accepted principle that if two interpretations are possible of a provision in a fiscal statute, such as the one in question, the interpretation which is favourable to the assessee is to be preferred especially when the provision is one intended to confer certain reliefs or exemptions in favour of the assessee. There is nothing in the section which would justify the adoption of the interpretation canvassed for by the respondents in an unqualified manner. If such an interpretation is adopted, it will go against the very object for which it was enacted. In the circumstances, I would hold that the view taken by the second respondent that, in view of exhibit P-1 order, no second order in exercise of the power under Section 273A(1) of the Act can be passed is unsustainable in law.

12. Regarding the interpretation of Sub-section (3) also, I am inclined to take the view that the said Sub-section expressly prohibits only the exercise of power to

grant the same relief or reliefs under Clauses (i) to (iii) for a second time and that too for a period different from the period for which the relief or reliefs under these clauses have already been sought and either refused or granted by an earlier order passed by the second respondent. Once an order is passed in relation to one of the matters specified in any of the clauses of Sub-section (1) so far the power would stand exhausted and no further order can be passed in respect of that matter for any other year at any time. If, on the other hand, the argument of learned counsel for the first respondent is accepted, it would follow that even if the second respondent was called upon to exercise his power in relation to only one of the several matters mentioned in the three clauses, that would preclude the assessee from claiming relief in respect of all other matters in respect of which there had been no occasion for the second respondent to exercise his power. To my mind, there is no indication in the provisions of Sub-sections (1) and (3) of Section 273A of the Act to warrant such an understanding of the relevant provisions. The power conferred is in relation to various matters and exercise of power in relation to one matter out of several matters cannot exhaust the power in relation to the remaining matters and acceptance of the above view, in my opinion, would only be in consonance with the object and intention with which the Legislature has enacted the provisions concerned. The provisions in Section 14 of the General Clauses Act would also support the view which I have taken in this case. For all the above reasons, I wouldhold that the view taken by the second respondent, while disposing of exhibit P-2 petition is unsustainable in law. While taking the above view and dismissing the application, the second respondent has failed to exercise the jurisdiction vested in him illegally. In this view, the rejection of the rectification petition filed under Section 154 of the Act by the second respondent as per exhibit P-5 order and exhibit P-7 order passed by the first respondent is illegal and as such the said orders are liable to be set aside. Accordingly, exhibits P-3, P-5 and P-7 are set aside. The second respondent is directed to consider and dispose of exhibit P-2 petition on its merits in accordance with law and in the light of the findings and observations contained in this judgment.

13. Original petition is, accordingly, allowed. No costs.