

Commissioner Of Income Tax, Andhra ... vs M.: Chandra Sekhar on 4 December, 1984

Equivalent citations: 1985 AIR 114, 1985 SCR (2) 215, AIR 1985 SUPREME COURT 114, 1985 (1) SCC 283, 1985 TAX. L. R. 497, (1985) 1 APLJ 13.1, (1985) IJR 129 (SC), 1985 (17) TAX LAW REV 740, 1985 SCC (TAX) 85, 1985 UPTC 411, 1985 UJ (SC) 262, (1985) 2 SCR 215 (SC), (1985) 20 TAXMAN 3, 1985 TAXATION 76 (3) 261, (1985) 151 ITR 433, (1985) 13 ITC 196, (1985) 44 CURTAXREP 111

Author: R.S. Pathak

Bench: R.S. Pathak, V.D. Tulzapurkar

PETITIONER:

COMMISSIONER OF INCOME TAX, ANDHRA PRADESH

Vs.

RESPONDENT:

M.: CHANDRA SEKHAR

DATE OF JUDGMENT 04/12/1984

BENCH:

PATHAK, R.S.

BENCH:

PATHAK, R.S.

TULZAPURKAR, V.D.

CITATION:

1985 AIR 114

1985 SCR (2) 215

1985 SCC (1) 283

1984 SCALE (2) 973

CITATOR INFO :

R 1991 SC 966 (2)

ACT:

Income Tax Act, 1961. Section 139(1) read with proviso- In a case where Income Tax officer levies interest on income tax return filed after the date prescribed by sub-s.(1) of s.139 whether a valid presumption can be raised that Income Tax Officer extended time for filing voluntary return under the proviso to Sub. s.(1) of s.139.

Section 271(1)(a)-Scope of-Whether penalty can be levied on income tax return filed after the date prescribed by s.139(1) but on which Income Tax officer has levied interest under cl.(iii) of the proviso. Held No. The

time allowed by Income Tax officer under proviso to Sub-s.(1) of s. 139 for filing return falls within the expression "the time allowed" in cl.(a) of Sub-s.(1) of s.271.

Sub-s.(1) of s.139 of the Income Tax Act, 1961 prescribes the period within which a voluntary income tax return must be filed. When an assessee cannot file a return within the prescribed period, the proviso to Sub-s.(1) of s.139 entitles the assessee to make an application for extension of time in the prescribed manner and the form stating the reasons on which the extension of time is sought. On such an application being made, the Income Tax officer is empowered to extend the period for filing the income tax return subject to payment of interest on the amount of tax payable.

HEADNOTE:

The respondent assessee filed voluntary income tax returns for some assessment years after the date prescribed by Sub-s.(1) of s.139 of the Income Tax Act, 1961. The Income Tax officer treated the assessee as being in default and imposed penalties under cl. (a) of Sub-s.(1) of s.271 of the Act. In appeal before the Appellate Assistant Commissioner of Income Tax the assessee contended that since interest had been levied under cl.(iii) of the Proviso to Sub-s. (1) of s.139, no question arose of imposing a penalty. The Appellate Assistant Commissioner rejected the contention. In second appeal the Income Tax Appellate Tribunal held that as the Income Tax officer had levied interest upto 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 Appellate Tribunal allowed the appeals and canceled the penalties. On a reference being made, the High Court held that the Appellate Tribunal was justified in relying upon the presumption. Hence these appeals by the Revenue. The Revenue contended that there was

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no material to warrant the finding that an application had made by the assessee A for extension of time and that upon such application the Income Tax officer extended the time. The Revenue 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.

Dismissing the appeals,

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HELD: 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 a good reason for doing so, and that would have been on grounds pleaded 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 statute. 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. [221E-G]

Additional Commissioner of Income Tax, Gujarat v. Santosh Industries, [1974] 93 I.T.R. 563, M. Nagappa and others v. Income Tax officer, Central Circle-I, Bangalore and others, [1975] 99 I.T.R. 32, Poorna Biscuit Factory v. Commissioner of Income Tax, A.P., [1975] 99 I.T.R. 41, Commissioner of Income Tax, Orissa v. Gangaram Chopolia, [1976] 103 I.T.R. 613, Metal India Products v. Commissioner of Income Tax, Lucknow, [1978] 113 I.T.R. 830 and Commissioner of Income Tax, Punjab v. Kula Valley Transport Co. P. Ltd., [1970] 77 I.T.R. 518. not applicable.

Penalty under cl (a) of Sub-s (1) of s.271 of the Income Tax Act is attracted if the Income Tax officer is satisfied that the assessee as, 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-s.(1) of s.139. The proviso so that sub-section empowers the Income Tax officer to extend the date for furnishing the return. 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 specially 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 upto 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 cl.(a) of Sub-s.(1) of s.271. That being so, the conclusion must follow that the penalty provision does not come into play at all. [223C-G]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1299 A to 1303 of 1973 From the Judgment and order dated the 3rd February, 1972 of the Andhra Pradesh High Court in case referred No. 61 of 1970 S. T. Desai, M. N. Tandon and Miss. A. Subhashini for the Appellant.

A. Subba Rao, for the respondent.

The Judgment of the Court was delivered by PATHAK, J. These appeals by special leave are directed(against the judgment of the High Court of Andhra Pradesh disposing of a reference under Sub-s. (1) of s. 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 ?
2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalties levied under section 271 (1) (a) ?

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 cl. (2) of Sub-s. (1) of s. 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-s. (4) of s. 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-s. (1) of s. 139 and, therefore, no question arose of imposing a penalty. Both contentions were rejected by the Appellate Assistant Commissioner. In second appeal before the A income Tax Appellate Tribunal the assessee raised substantially the same contentions. The Appellate Tribunal took the view that in cases falling under Sub-s. (1), Sub-s. (2) and Sub-s. (4) of s. 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 cl. (1) of s. 139 and also the levy of penalty under cl. (a) of Sub-s. (1) of s. 271". It held that as the Income Tax officer had levied interest upto 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 in 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.

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 livable in the circumstances, the High Court answered the reference in favour of the assessee.

To appreciate the true scope of the questions referred, it is necessary to understand the scheme enacted in s. 139 of the Income tax Act, 1961. Broadly, the scheme envisages a voluntary return by the assessee under Sub-s. (1) of s. 139, a return consequent upon a notice by the Income Tax officer under Sub-s. (2) of s. 139 and a return in the circumstances mentioned in Sub-s. (4) of s. 139. We are not concerned where with a return under Sub-s. (3) of s. 139 disclosing a loss nor are we concerned with a revised return under Sub-s. (S) of s. 139. In the case of a voluntary return, Sub-s. (1) of s. 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 cl. (i) of the proviso to Sub-s. (1) of s. 139 the period may be extended upto September 30 of the assessment year without charging any interest, and in a case covered by cl. (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 cl. (iii), the assessee is liable to pay interest from october 1 or January I, 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-s. (2) of s. 139 the Income Tax 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-s. (1) of s. 139. Where, however, the assessee does not furnish a return within the time allowed to him under Sub-s. (1) or Sub-s. (2) of s. 139 then before any assessment is made he may, under Sub-s (4) of s. 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-cl.

(iii) of the proviso to Sub-s. (1) of s. 139 relating to payment of interest would apply to the case. Sub-s. (8) of s. 139 was inserted by the Finance Act, 1963 with effect from April 28, 1963. It declared that notwithstanding anything contained in cl. (iii) of the proviso to Sub-s. (1) of s. 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 s.

139. It may be noted that the language of Sub-s. (8) of s. 139 suffered material change with effect from April 1, 1971.

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 cl. (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-s. (1) of s. 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-

(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;

(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, upto the 31st day of December of the assessment year without charging any interest; and

(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- -

(a) in the case of a registered firm or an unregistered firm which has been assessed under cl.

(b) of s. 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,"

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.

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-s. (1) of s. 139 requires the assessee to make an application for extension of time in the prescribed manner, and the prescribed form of the application set forth is Form No. 6 pursuant to rule 13 of the Income Tax 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 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 grounds pleaded 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 statute. 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.

In the instant case, the extension was a matter falling within Sub-s. (1) of s. 139, and the returns furnished by the assessee must be attributed to that provision. They were not returns furnished within the contemplation of Sub-s. (4) of s. 139. Therefore, the decision of the Gujarat High Court in Additional Commissioner of Income Tax, Gujarat v. Santosh Industries,⁽¹⁾ of the Karnataka High court in M. Nagappa and others v. Income Tax officer, Central Circle-I, Bangalore and others,^(a) of the Andhra Pradesh High Court in Poorna Biscuit Factory v. Commissioner of Income Tax, A.P.,⁽³⁾ of the Orissa High Court in Commissioner of Income Tax, Orissa V. Gangaram Chapolia,⁽⁴⁾ and of the Allahabad High Court in Metal India Products v. Commissioner of Income Tax, Lucknow⁽⁵⁾ cannot be invoked in the instant case. They are cases dealing with a return filed in the circumstances mentioned in Sub-s. (4) of s. 139.

our attention has also been drawn to the decision of this Court in Commissioner of Income Tax, Punjab v. Kulu Valley Transport Co. P. Ltd.⁽⁶⁾ That was a case where the returns were filed under Sub-s. 3 of s. 22 of the Indian Income Tax Act, 1922. They were not returns furnished within the time allowed by or under Sub-s. (1) or Sub-s. (2) of s. 22 of that Act. Accordingly, that case also need not be considered.

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

The second question raises the point whether the Appellate Tribunal was justified in cancelling the penalties levied under cl. (a) of Sub-s. (1) of s. 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-

(a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under Sub-s. (1) of s. 139 or by notice given under Sub-s. (2) of s. 139 or 9. 148 or has without reasonable cause failed to furnish it within the time (1) [1974] 93 I.T.R. 563.

(2) [1975] 99 I.T.R. 32.

(3) [1975] 99 I.T.R. 41.

(4) [1976] 103 I.T.R. 613.

(5) [1978] 113 I.T.R. 830.

(6) [1970] 77 I.T.R. 518 allowed and in the manner required by Sub-s. (1) of s.

139 or by such notice, as the case may be, or A b)

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(c) ...

..... he may direct that such person shall pay by way of penalty,-

(i)

(ii)

(iii)..... -..... -..... -..... -.....-.....

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It is clear that penalty is attracted if the Income Tax officer is satisfied that 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-s. (1) of s. 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 upto 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 cl. (a) of Sub- s. Of s. 271. That being so, the conclusion must follow that the penalty provision does not come into play at all.

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

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

H.S K.

Appeal dismissed.