

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

—
WRIT PETITION No.14088 of 2004

ORDER: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents.

The petitioner is an assessee and a survey in the business premises of the petitioner was conducted under Section 133A of the Income Tax Act, 1961 (for short, the Act) on 19.12.2001. Consequent to the said survey, the petitioner filed a revised return of income admitting an additional income of Rs.50.00 lakhs. The revised return was filed on 11.02.2002. The case was taken up for scrutiny after issuance of a notice under Section 143(2) of the Act and the assessee cooperated with the Department during the course of assessment proceedings. The assessment was completed on 28.03.2002 accepting the income as stated in the revised return of income. The balance of tax payable was determined at Rs.12,92,805/- after adjusting the prepaid tax of Rs.10,96,448/-. The assessing officer charged interest under Section 234B of the Act amounting to Rs.3,04,017/- and under Section 234C amounting to Rs.1,08,788/-. The petitioner paid the entire tax portion of the demand but did not pay the interest.

The petitioner submitted an application before the Chief Commissioner of Income Tax-I, Hyderabad, requesting for waiver of interest levied under Sections 234B and 234C of the Act by invoking Section 119(2)(a) of the Act. The Chief Commissioner of Income Tax rejected the application by his order dated 12.12.2003 holding that the revised return of income was filed only after survey operation conducted under Section 133A of the Act and during the said period, the incriminating material was found by the Department which led the assessee to file the revised return disclosing the additional income. He

held that the filing of revised return cannot be construed as filing it voluntarily or due to fear. It appears that the assessee filed an application before the Central Board of Direct Taxes seeking the same relief and specifically stating that the revised return was filed voluntarily to avoid litigation and the case falls within the purview of circular dated 21.05.1996. But, the Central Board of Direct Taxes rejected the application on the ground that it is not empowered to review an order passed by the Chief Commissioner of Income Tax. In those circumstances, the assessee/petitioner filed the above Writ Petition challenging the orders of the Chief Commissioner of Income Tax dated 12.12.2003 for the assessment year 2001-2002.

Learned Counsel for the petitioner submits that the revised return was filed voluntarily for the assessment year 2001-2002 declaring the income of Rs.50.00 lakhs and the order of the Chief Commissioner does not indicate the so-called incriminating material found by the Department. He also submits that since the revised return was accepted in toto, the observation of the Chief Commissioner of Income Tax that incriminating material was found, has no basis. He relied on the decisions in **Rohit Kumar and Co. v. F.J.Bahadur, CIT**^[1], **Kakumanu Sudershan Rao v. Chief Commissioner of Income Tax**^[2], **Tushaar Mehta v. Chief Commissioner of Income Tax**^[3], **Commissioner of Income Tax v. Suresh Chandra Mittal**^[4], **Commissioner of Income Tax v. Suresh Chandra Mittal**^[5], **V.V.Projects and Investments P.Ltd v. Deputy Commissioner of Income Tax**^[6] and an order of the Division Bench of this Court in **The Commissioner of Income Tax, Vijayawada v. M/s.Chennupati Tyre & Rubber Products, Vijayawada** (ITTA No.190 of 2003, dated 21.10.2014).

Learned Standing Counsel for the respondents, on the other hand, supported the order of the Chief Commissioner of Income Tax and relied

on **Hakam Singh v. Commissioner of Income Tax, Meerut**^[7].

The points that arise for consideration in this case are whether the revised return was filed voluntarily and whether the Chief Commissioner of Income Tax has to disclose the incriminating material as observed in his order dated 12.12.2003.

We have noticed that Sections 234A, 234B and 234C of the Act were introduced by the Direct Tax Laws (Amendment) Act, 1987 from the assessment year 1989-1990 and there was no provision for reduction or waiver of penal interest unlike Section 273A of the Act, which provides for waiver and reduction of penalty. But, the Central Board of Direct Taxes issued a circular in exercise of powers conferred under Section 119(2)(a) of the Act on 23.05.1996, providing for reduction or waiver of interest. The above cases cited on behalf of both sides by the Counsel relate to the cases arising out of Section 273A of the Act. In the absence of a specific provision in the Act, the only source of power is the notification dated 23.05.1996 in F.No.400/234/95-IT(B) . In the said notification a direction was issued to the Chief Commissioner of Income Tax and the Director General of Income Tax to reduce or waive interests charged under Section 234A or 234B or 234C of the Act in the classes of income specified in paragraph 2 of the said order. Paragraph 2 of the said notification reads as follows:

“2. The class of incomes or class of cases in which the reduction or waiver of interest under section 234A or section 234B, or, as the case may be, section 234C can be considered, are as follows:

- (a) Where during the course of proceedings for search and seizure under section 132 of the Income Tax Act, or otherwise, the books of account and other incriminating documents have been seized and for reasons beyond the control of the assessee, he has been unable to furnish the return of income for the previous year during which the action under section 132 has taken place, within the time specified in this behalf and the Chief Commissioner or, as the case may be, Director-General is satisfied having regard to the facts and circumstances of the case that the delay in furnishing such return of income cannot reasonably be attributed to the

assessee.

- (b) Where during the course of search and seizure operation under section 132 of the Income Tax Act, cash is seized which is not allowed to be utilized for payment of advance tax instalment or instalments as they fall due after the seizure of cash and the assessee has not paid fully or partly advance tax on the current income and the Chief Commissioner or the Director General is satisfied that the assessee is unable to pay the advance tax.
- (c) Where any income chargeable to income tax under any head of income, other than "capital gain" is received or accrues after the due date of payment of the first or subsequent installments of advance tax which was neither anticipated nor was in the contemplation of the assessee and the advance tax on such income is paid in the remaining installment or installments and the Chief Commissioner or Director General is satisfied on the facts and circumstances of the case that this is a fit case for reduction or waiver of interest chargeable under section 234C of the Income Tax Act.
- (d) Where any income which was not chargeable to income tax on the basis of any order passed in the case of an assessee by the High Court within whose jurisdiction he is assessable to income tax, and as a result, he did not pay income tax in relation to such income in any previous year and subsequently, in consequence of any retrospective amendment of law or, as the case may be, the decision of the Supreme Court in his own case, which event has taken place after the end of any such previous year, in any assessment or reassessment proceedings the advance tax paid by the assessee during the financial year immediately preceding the relevant assessment year is found to be less than the amount of advance tax payable on his current income, the assessee is chargeable to interest under section 234B or section 234C and the Chief Commissioner or Director General is satisfied that this is a fit case for reduction or waiver of such interest.
- (e) Where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the Assessing Officer."

In the light of the order of the Central Board of Direct Taxes, now it is urged that the revised return filed by the assessee is voluntary and hence the assessee is entitled for the benefit of waiver of penal interest. Though the decision in **Hakam Singh** (supra) arises out of a decision

under Section 273A of the Act, the meaning of “voluntary” was considered and relied on a notification issued by the Central Board of Direct Taxes dated 30.09.1969, whereunder the word “voluntary” was explained in paragraph 7 as follows:

“The word 'voluntary' in its primary sense means 'proceeding from one's own free will' or 'without compulsion'. In its secondary sense it implies 'without any legal obligation' or 'not prompted by fear or inducement' depending upon the context in which it is used. In the context in which the word 'voluntary' has been used it is not possible to take the view that it means 'without any legal obligation'. Section 139 places a legal obligation on all persons having taxable income to disclose their income in the prescribed form. If the word 'voluntary' is interpreted to mean 'without legal obligation' no disclosure under Section 271(4A) would be voluntary. This interpretation has, therefore, to be rejected. Therefore, in the context in which the word 'voluntary' has been used in Section 271(4A) it is only reasonable to infer that the disclosure should be one which is not prompted by fear or inducement of any kind. If there is seizure of incriminating material in the course of a search and penalties and prosecutions are imminent and the disclosure is a sequel to such a search, it would not be possible to treat the disclosure as a voluntary one. The compulsion of such a situation is even more real than any legal compulsion. Similarly, if a disclosure is made by an assessee after obtaining an assurance that the penalty would be waived, the disclosure would be clearly prompted by inducement....”

In the case before the Allahabad High Court, consequent to the search, the books of accounts of the petitioners were seized on 22.11.1973 and the return for several years was filed after eleven months on 07.10.1974. A counter affidavit was filed stating that the returns were filed because the petitioners were prompted to suffer themselves from the consequences of not filing the return and they were prompted by a sense of fear and the said statement was accepted by the Court. By construing the wording of Section 273A of the Act, the Allahabad High Court found that the return was not voluntary by observing as follows:

“The question is whether a return, filed out of a sense of fear of penalty or prosecution, is voluntary. The I.T. Act does not define the term "voluntarily". The word "voluntary" has been denned in Shorter Oxford Dictionary, Vol. 2, p. 2371, as performed or done of one's own free will, impulse or choice not constrained, prompted or suggested by another, proceeding from the free unprompted or unconstrained will of a person. A return filed under the constraint of exposure to adverse action

by the I.T. department, in our opinion, will not be voluntary within the meaning of s. 273A. The action of the petitioners in filing the returns after the books of account had been seized at a raid was impelled by the compelling circumstance that the petitioner was likely to be dealt with under the penal provisions of the I.T. Act. The action of the petitioner in filing the returns under such a constraint cannot be said to be voluntary. In **Mool Chand Mahesh Chand v. CIT** [1978] 115 ITR 1 (All), the ITO started investigation by asking for details in respect of several matters while conducting the assessment proceedings for the year 1969-70. Thereafter, the assessee filed returns for the years 1964-65 to 1970-71. It was held that since the investigation had started and concealed income had come to light, it was a case covered by the word "detection" occurring in s. 273A. It was further observed that in these circumstances the returns were filed after the assessee felt that the game was up because the investigation initiated by the ITO exposed him to a situation that he had assessable income in respect of other years; it cannot be said that the filing of the return was voluntary. This decision shows that the term "voluntary" under Section 273A has been used to indicate an action free of any constraint. A return filed in order to save oneself from a possible penal action cannot be termed "voluntary".

This decision of the Allahabad in **Hakam Singh** (supra) was considered by the Bombay High Court in **Rohit Kumar and Co.** (supra), wherein the conditions necessary for invoking the Commissioner's exercise of discretion was considered. The said decision observed that the same view as in **Hakam Singh** (supra) was taken by the Allahabad High Court in **Mool Chand Mahesh Chand v. CIT**^[8], but a contrary view was taken in **Jakhodia Brothers v. CIT**^[9]. The Bombay High Court further observed as follows:

“The Karnataka High Court, in the cases of **S.R.Jadav Desai v. WTO** ((1980) 121 ITR 531) and **B.Anjanappa v. CWT** ((1980) 124 ITR 433), the Gujarat High Court in the case of **Madhukar Manilal Modi v. CWT** ((1978) 113 ITR 318) and the Punjab and Haryana High Court in the case of **Hira Singh v. CWT** ((1982) 134 ITR 438), took the view that the word ‘voluntary’ meant in contradiction to compulsion and the words “good faith” meant with due care and caution. If return was filed except in response to a notice requiring the assessee to file a return, it will be a case of a return filed voluntarily. It will be a case of filing the return in good faith, if what is filed is with due care and caution, that is substantially correct to the best of the information and belief of the assessee. Since most of these cases and some more cases also have been considered by the aforesaid Division Bench of our High Court in **Laxman v. CIT** ((1988) 174 ITR 465, it is really not necessary to refer to the individual cases in detail as observed by the Division Bench of our

Court in 174 ITR 465 (at.p.472):

“The term ‘good faith’ is not defined under the Act but is defined under section 2(22) of the General Clauses Act. Either under the General Clauses Act or in ordinary parlance, an act done in good faith means an act done honestly even if it is tainted with negligence or mistake. All that is required is that disclosure of income must be full and true according to the honest belief of the assessee..... ‘voluntary’ means ‘without compulsion’. What was the compulsion in the instant case? The so-called visit of the Inspector to the house in the course of general survey operations. In the first place, there is no material whatsoever to come to the conclusion that any Inspector visited the petitioner’s premises and made inquiries about the source of funds with which the building was being constructed... Assuming that some Inspector did visit the premises of the petitioner and made inquiries about the source of funds, it is difficult to come to the conclusion that such visit and the inquiry by itself amounted to compulsion or constraint on the petitioner to file the returns due to fear of detection and inevitable follow-up action...” ”

The facts in the case before Bombay High Court were that an amount of Rs.22,87,000/- was seized from one Sri K.C.Mehta on 30.04.1981 and thereafter the petitioner brought to the notice of the Deputy Director of Inspection (Intelligence) as well as the Commissioner that the amount belonged to it and should be treated as income for the assessment year 1981-1982, the previous year for the relevant assessment year had not ended. There was no question of concealment in the hands of the assessee far less a case of detection and the returns filed cannot but be held to be voluntary and in good faith. In those circumstances, the Commissioner was directed to dispose of the application under Section 273A of the Act afresh.

This Court had also an occasion to consider the meaning of “voluntary” disclosure of income in **Sujatha Rubbers v. Income Tax Officer**^[10], wherein the order of the Commissioner dismissing the application for waiver of interest under Section 273A of the Act was challenged. The facts of the said case are that the Government of India introduced a scheme called amnesty scheme to encourage assesseees to file returns voluntarily and it was in force from 15.11.1984 to 31.03.1987. During the currency of the said scheme, the petitioner filed revised returns for the assessment years 1982-1983, 1983-1984 and 1984-1985. The interest was levied and the same was sought to be

waived under Section 273A of the Act. This Court elaborately considered the various decisions and held that the Commissioner approached the issue from a wrong perspective. This court opined that his rejection of request on the ground that the returns were not voluntary as they were filed after the survey operations were completed was erroneous as it was without considering the effect of survey operations and the conduct of the assessee. It observed as follows:

“We are, therefore, inclined to think that the expression "voluntarily" occurring in sub-section (1) of section 273A could not be construed in isolation with reference to the general animus or state of mind of the assessee. From the legal obligation to file a return, no element of fear could be either attributed or inferred. The word "voluntarily", in the context of section 273A(1), therefore, has to be construed as filing of the return by the assessee without being prompted by the animus to avoid or preempt adverse exposure or penal action. The Commissioner, before rejecting the returns as not voluntary, must have material based upon which it is reasonable to infer that, in all probability, but for the filing of the "voluntary" return, the assessee would have been subjected to penal action or adverse exposure. In other words, "out of fear, an assessee has made full disclosure", by itself, without anything more, cannot be a ground for not exercising the discretion under section 273A. The fear must be traceable to the imminent or proximate exposure of the assessee to penal action but for the filing of the voluntary return under section 273A and, in order to enquire into this subjective element, there must be in existence objective facts warranting such an inference.”

Accordingly, it held that the three revised returns filed by the petitioner were voluntary returns within the meaning of Section 273A(1) of the Act and the order of the Commissioner of Income Tax was set aside.

Another Division Bench of this Court in **Kakumanu Sudershan Rao** (supra), cited by the learned Counsel for the Petitioner, considered the issue in the light of the circular of the Central Board of Direct Taxes dated 23.05.1996 and held that the ground of rejection by the Chief Commissioner was contrary to the note put up before him and was vitiated by non-application of mind to the relevant aspects placed before him and also the nature of the return was a debatable point. Since the Chief Commissioner has not passed a reasoned order, the impugned

order set aside and the case was remanded.

Yet another Division Bench of this Court in **K.S.N.Murthy v. Chairman, Central Board of Direct Taxes**^[11] considered the same word in the light of the facts of that case and set aside the order on the ground that the Commissioner has not taken into account the relevant factors and did not apply his mind to the facts of the case. In coming to the said conclusion, this Court relied on an earlier Division Bench judgment on **Sujatha Rubbers** (supra).

The decision of this Court in **V.V.Projects and Investments P.Ltd** (supra) was based on the acceptance of the assessing officer in his order dated 16.03.2001 that the revised return and the explanation submitted along with it was to buy peace with the department and to avoid protracted litigation.

In the case before us no such explanation was filed along with the revised return and such explanation was given only to the Chief Commissioner of Income Tax, obviously taking a cue from the said decision.

Learned Counsel for the petitioner relied on **Suresh Chandra Mittal** (5 supra) of the Supreme Court affirming the decision of the Madhya Pradesh High Court in **Suresh Chandra Mittal** (4 supra). The High of Madhya Pradesh found that the declaration of income made by the assessee in his revised returns and his explanation that he had done so to buy peace with the department and to come out of vexed litigation should be treated as bona fide in the facts and circumstances of the case.

The other decision of the Division Bench of this Court in **D.Rama Rao v. Assistant Commissioner of Income Tax** (ITTA No.180 of 2003 dated 17.09.2014) relates to penalty and its effect on the future

prosecution and the appeal of the assessee was allowed with the following observations:

“The levy of penalty cannot be resorted to as a matter of course. By their very nature, the returns are bound to be at variance from what is contemplated under the Act or the estimates of the Assessing Officers. Many a time, the understanding of a given provision in a particular way, itself would lead to a considerable difference as to the income or the corresponding tax. The very fact that quite large number of remedies in the form of appeals at various stages is provided for, discloses that even the understanding of the assessing or adjudicatory authorities; not absolute. The levy of penalty is not going to leave the matter at that. It would expose the assessee to prosecution also by treating him as an economic offender. An assessee can be made to suffer such far reaching consequences, if only facts of the case support, and it emerges that the assessee had a clear intention to suppress the income. We do not find such elements in the instant case.

The appeal is accordingly allowed and the order of the Tribunal is set aside. There shall be no order as to costs.”

The said order was followed by the same Division Bench in **M/s.Chennupati Tyre & Rubber Products, Vijayawada** (supra). But, such is not the case in the instant case before us and this is a case of penal interest.

In the case before us, the learned Counsel for the petitioner did not file the copy of the order of assessment, but filed only a copy of the application filed before the Chief Commissioner of Income Tax dated 27.11.2003. In the said application the reason stated was that the income was declared with a bona fide intention not to protract any litigation with the department and also with a genuine belief and oral assurance of the authorities conducting the survey operations that such offer and the payment of taxes thereon will save the petitioner from any penal proceedings and also entitle the petitioner for waiver of interest under Section 234B and 234C of the Act. The pleas of genuine belief and oral assurance stated in the said application are without any basis and evidence. On the other hand, the observation of the Chief Commissioner of Income Tax that during the period of survey,

incriminating material was found by the department, which led to the assessee to file the revised return disclosing the additional income, cannot be said to be without any basis as the Chief Commissioner would have an opportunity to go through the file. The assessee did not file the revised return with any covering letter stating the circumstances under which the assessee was filing the revised return, so that the assessee could get the benefit of waiver of penal interest.

In the absence of any material, we have to assume that the observations made by the Chief Commissioner of Income Tax with regard to the reasons of revised return, whether it was voluntary or otherwise, have to be upheld and we hold that the Chief Commissioner of Income Tax was right in holding that the return was not 'voluntary'. Hence, the contention of the learned Counsel for the petitioner is rejected.

With regard to the other point raised by the learned Counsel for the petitioner that no evidence was furnished to the assessee by the Chief Commissioner of Income Tax pursuant to the observation that 'incriminating material' was found during the survey operations, we can reject the said plea as it was only an oral plea raised by the learned Counsel during the course of arguments and no whisper is made in the affidavit filed in support of the Writ Petition. If the petitioner had made basis for such a ground of attack, we would have called for records and verified whether any incriminating material was found during the survey operations. In the absence of any allegation in the affidavit, we have to take that the observation made by the Chief Commissioner of Income Tax was bona fide and made after perusing the record.

In view of the above facts, the Writ Petition is liable to be dismissed, and the same is, accordingly, dismissed. The miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

22.01.2015

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[\[1\]](#) (1991) 190 ITR 0093
[\[2\]](#) (1998) 234 ITR 0444
[\[3\]](#) (2004) 189 CTR (Mad) 550
[\[4\]](#) (2000) 241 ITR 0124
[\[5\]](#) (2001) 251 ITR 0009
[\[6\]](#) (2008) 300 ITR 0040
[\[7\]](#) (1980) 124 ITR 228 (All)
[\[8\]](#) (1978) 115 ITR 1 (All)
[\[9\]](#) (1978) 115 ITR 61
[\[10\]](#) (1992) 194 ITR 0355
[\[11\]](#) (2001) 252 ITR 0269