

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

206 CWP-18769-2003 (O&M)
Date of decision: 22.02.2024

Baso Devi and others

...Petitioners

Versus

Central Board of Direct Taxes through its Chairman and others

...Respondents

CORAM: HON'BLE MR.JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR.JUSTICE VIKAS SURI

Present: Ms. Divya Suri, Advocate with
Mr. Sachin Bhardwaj, Advocate for the petitioners.

Ms. Gauri Neo Rampal Opal, Sr. Standing Counsel
for respondent No.4.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioners before us are legal heirs of late Megh Raj who have come in second round of litigation before this Court after the earlier writ petition filed by them resulted in the same position as it stood prior to the passing of High Court's order.
2. In the first round, the brief facts which need to be noticed are that the petitioners had preferred civil writ petition No.3537 of 2003 before this Court praying for allowing waiver of the interest amount as assessed already and charged under Section 234A, 234B and 234C of the Income Tax Act, 1961 for non submission of assessment of income tax returns for the period from 1991 upto 2000. Land of Late Megh Raj, predecessor-in-interest of the petitioners measuring 33 acres and 10 marlas was acquired by Government of Haryana, vide notifications dated

07.02.1986 and 18.02.1987 and an award was passed on 27.08.1987. Compensation so awarded was enhanced by Addl. District Judge, Kurukshetra from Rs. 70,000/- to Rs.1 lakh per acre and total compensation in the sum of Rs.53,76,900/- was received by him, which he deposited in the banks. Megh Raj filed returns on 15.11.2000 for the assessment years 1990-91 to 1995-96 and for 1996-97 to 1999-2000. He thereafter was served with notice under Section 148 of the Act of 1961 for the assessment years and a liability to the tune of Rs.1,04,01,430/- was created in the form of interest accruing on the FDRs and interest payable under Sections 234A, 234B and 234C of the Act of 1961. Megh Raj expired on 21.08.2001 and the petitioners filed an application under Section 119(2) of the Act of 1961 for seeking waiver of interest in terms of circular of Central Board of Direct Taxes (for short 'CBDT') dated 23.05.1996. The respondents rejected the application and the petitioners, therefore, preferred the writ petition (supra). This Court after having considered the submissions observed as under:-

“We have heard learned counsel for the parties and carefully perused the record. The main ground on which respondent No. 1 declined the petitioners prayer for waiver of Interest is that last Shri Megh Raj had furnished incorrect particulars in Form 15-H in order to avoid the payment of taxes. However, while taking that view, respondent No. 1 over looked the fact that in his reply dated 8.2.2000 sent to Income-tax Officer, Ward-1, Kurukshetra, Shri Megh Raj had clearly stated that he was an illiterate person of 70 years age and had signed Form 15H as asked by the Bank Manager without knowing what its contents were. Similar reply was sent by his Chartered Accountant on 3.10.2000. Respondent No. 1 also over looked the fact that the Assessing Officer

had strongly recommended for waiver of interest. In our opinion, non-consideration of these factors has the effect of vitiating the conclusion recorded by respondent No. 1 that the assessee had furnished incorrect particulars in Form 15-H.

We are also inclined to agree with the learned counsel for the petitioners that filing of incorrect particulars in Form 15-H cannot lead to an inference that Sh. Megh Raj had deliberately tried to mislead the authorities and wanted to avoid payment of tax or to file the return in time. The old age and illiteracy of the assessee were important factors which respondent No. 1 should have taken into account while judging the veracity of the assertion made by him that he had signed Form 15-H on the dotted lines. Therefore, without examining other issues raised in the petition, we deem it proper to remand the case to respondent No. 1 for deciding the petitioners application for waiver of interest afresh.

Hence, the writ petition is allowed and order ANNEXURE P-1 is quashed with a direction to respondent No. 1 to decide the application filed by the petitioners under Section 119(2)(a) of the 1961 Act afresh.

The petitioners are directed to appear before respondent No. 1 in person or through their Advocate on 18.8.2003 who, we expect, will pass a fresh order within next two months."

3. The Chief Commissioner, Income Tax thereafter again considered the application under Section 119(2)(a) of the Act of 1961 as directed by the High Court and passed an order on 23.10.2003, confirming the earlier order and rejecting the application. The order dated 23.10.2003 is impugned before us.

4. Learned counsel for the petitioners has taken us to the order passed by the Chief Commissioner and submits that the authority has failed to take into consideration the observations of the High Court as well as failed to interpret the circular issued by CBDT dated 23.05.1996 in its correct perspective and has wrongfully upheld the interest assessed on account of non-payment of advance tax. He submits that the said interest ought to have been made as the circumstances satisfied that to recondition as required for waiver in terms of CBDT circular dated 23.05.1996, mainly that the return of the income could not be filed due to unavoidable circumstances and the return of the income was filed voluntarily without there being a detection by the Assessing Officer.

5. Per contra, learned counsel for the department has submitted that as the returns of the income were filed by the concerned assessee only after he was informed of non-filing of the returns, the same would amount to have been detected by the Assessing Officer and therefore, the benefit of the notification issued by the CBDT dated 23.05.1996 cannot be applied to the present case and the application under Section 119(2)(a) of the Act of 1961 has rightly been rejected.

6. We have considered the submissions and carefully gone through the orders passed by the Chief Commissioner, Income Tax. We find that the High Court had reached to a conclusion that an inference cannot be drawn that assessee Megh Raj had deliberately tried to mislead the authorities. The conclusion has also been drawn that old age and illiteracy of the assessee are important factors which should be taken into account while judging the veracity of the assertion regarding his ignorance relating to filing of returns. The Court has also reached to a

conclusion that Form 15-H was signed on dotted lines. In view thereof, if we examine the case of the petitioner in light of the CBDT circular dated 23.05.1996, we observe that the CBDT circular dated 23.05.1996 which provides class of incomes or class of cases in which the reduction or waiver of interest under Section 234A or 234B or as the case may be 234C of the Act of 1961, can be considered. Merely 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.

7. The question, therefore, arises before us is whether it is the case of filing of returns voluntarily without detection. The word detection would have to be understood in terms of the provisions of the Income Tax Act while in layman knowledge the detection would be coming to know of a particular aspect alone, but in terms of Income Tax Act, the provisions of Sections 142 and 148 of the Act of 1961 would come into play i.e. where there is a evasion on the part of any assessee which comes to the knowledge of the Assessing Officer and he initiates proceedings by issuing notice under Section 142(1) of the Act of 1961 that it can be said that the Assessing Officer has detected such an action of evasion of tax. It is also noticed and admitted position that till the date, petitioner Megh Raj filed his returns and deposited the tax, no notice under Section 142 of the Act of 1961 was issued nor any notice under Section 148 of the Act of 1961 was issued as has been noticed in the impugned order also.

8. In the present case interestingly, the Assessing Officer came to know about the Form 15-H and information mentioned therein which admittedly was signed by the assessee on dotted lines. Having come to

know about such information and that the assessee had not filed his returns for several years and letters seem to have been sent by the Assessing Officer to the assessee on 30.01.2000. Upon receiving the same, the assessee has filed his returns on 03.02.2000 i.e. within a period of four days. He thereafter has also sent a letter and he has also deposited the taxable income. In view thereof, it cannot be said that the income tax return was not filed voluntarily without detection of the Assessing Officer.

9. The second condition relating to the assessee having not filed return of income due to unavoidable circumstances though on the face of it cannot be said to be a situation available on record but as has already been observed by this Court in the earlier order (supra), the old age and illiteracy of assessee are important factors. The same therefore can be said to be relevant and treated as unavoidable circumstances. In view thereof, the order passed by the Chief Commissioner holding the said circumstances as not sufficient for waiver of tax are found to be unjustified and misinterpretation of CBDT notification. The notification appears to have been issued by the CBDT especially to deal with the cases like the one in hand. Once the citizen is ready to deposit and immediately deposit the tax upon coming to know of his liability, it cannot be said that he has deliberately or willfully evaded the depositing of tax and the interest in terms of Section 234A of the Act of 1961 can be waived.

10. In view of the aforesaid findings, this writ petition deserves to be allowed and the contents of the petitioners are sustained. The order passed on 24.10.2003 is quashed and set aside. Vide interim order, this Court on 04.12.2003, restrained the respondent from recovering the

interest. In view of above conclusions, we make the order absolute and waive the interest as demanded and subsequent proceedings under Section 140 of the Act of 1961 also stands quashed.

(SANJEEV PRAKASH SHARMA)
JUDGE

(VIKAS SURJ)
JUDGE

22.02.2024
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No