

acquired and utilised for the purposes of the water treatment plant. It was for that reason that provisions of Section 17(2) were used by the State Government. We find force in the plea of the learned counsel for the respondents and do not find that the urgency provisions were wrongly invoked. It may be noticed that while issuing notification under Section 4 of the Act, urgency provisions were not invoked and the land owners were permitted to file objections under Section 5A of the Act. In view of that, the action taken under Section 17(2) of the Act is found to be not liable to be assailed.

(15) In the result, we find no force in the writ petition and the same is, therefore, dismissed.

J.S.T.

Before G. C. Garg & N. K. Agrawal, JJ

SHANTI SARUP SHARMA,—*Petitioner*

versus

COMMISSIONER OF INCOME TAX, HARYANA, ROHTAK &
ANOTHER,—*Respondents.*

C.W.P. No. 6879 of 1997

1st December, 1998

Constitution of India, 1950—Arts. 226/227—Income Tax Act, 1961—S. 273-A—Penalty for non-payment of tax on interest received—Land acquired—Petitioner paid compensation with interest—Not a regular assessee—Not liable to pay income tax on amount of compensation received—Could not anticipate receipt of interest unless finally determined—Not supposed to pay advance tax in the same assessment year in which ‘interest’ received—Levy of penalty unjustified.

Held that there is considerable force in the petitioner’s plea that he could not anticipate the receipt of interest unless it was finally determined by the competent authority. Therefore, the petitioner was not supposed to pay advance tax in the assessment year in which the interest accrued. In these circumstances, the petitioner cannot be held liable for penalty for failure to file the

returns of income in the earlier years. The petitioner fulfilled all the conditions specified in Section 273-A of the Act. He filed the returns prior to the issuance of notices to him by the Assessing Officer. He filed the returns voluntarily and in good faith. He also made full and true disclosure of his income assessable to tax. He cooperated during assessment and the disclosed income was accepted by the Assessing Officer. The amount of tax was paid by the petitioner. It would be, therefore, manifest that the petitioner did fulfil all the conditions under section 273-A of the Act. In this light, the levy of penalty is found to be not justified. The Commissioner failed to exercise discretion in a fair, just and judicious manner.

(Para 16)

Constitution of India, 1950—Arts. 226/227—Income Tax Act, 1961—S. 273-A—Scope—Section empowers the Commissioner to reduce or waive interest and penalty—Power is discretionary—However, power cannot be either arbitrary or capricious but has to be judicious & objective.

Held that Section 273-A empowers the Commissioner to reduce or waive interest and penalty. There is no doubt that power given to the Commissioner under section 273-A is discretionary. The Commissioner is given the discretion when the requisite conditions envisaged by that Section are satisfied, that he may waive or reduce the penalty or the interest imposable under the Act. However, the exercise of discretion cannot be either arbitrary or capricious and has to be judicious and objective. If the conditions required for the exercise of discretion are satisfied, the discretion must be exercised judiciously by taking into consideration all the relevant facts. Satisfaction for the exercise of discretionary power must be an objective satisfaction and not a subjective satisfaction. Section 273-A does not confer absolute discretion upon the Commissioner to pass any order which he pleases to make. He is required to consider the application on merits. If the conditions for the exercise of the powers are fulfilled, he is obliged to exercise the discretion in favour of the assessee.

(Para 9)

A. K. Mittal, Advocate,—for the Petitioner.

R. P. Sawhney, Sr. Advocate with Mr. Rajesh Bindal,
Advocate,—for the Respondents.

JUDGMENT

N. K. Agrawal, J

(1) This is a petition under Articles 226 and 227 of the Constitution for quashing the orders dated 25th March, 1996 and 27th December, 1996 passed by the Commissioner of Income-tax under Sections 273-A and 154 of the Income Tax Act, 1961 (for short, "the Act") respectively.

(2) Petitioner owned certain agricultural land. He received compensation from the Haryana Government on 13th February, 1991 consequent upon the acquisition of his land. He also received interest for several years on the amount of compensation. He was liable to pay income-tax on the interest income received by him for different years. The petitioner filed returns for different assessment years showing income from interest. The Assessing Officer completed assessments on 31st August, 1992 under Section 143 (1) of the Act for the assessment years 1982-83 to 1988-89. The Assessing Officer also charged interest under Sections 139(8) and 217 of the Act for the aforesaid assessment years aggregating to Rs. 2,30,881. The Assessing Officer levied penalty also for failure to furnish returns, without reasonable cause, under Section 271 (1)(a) of the Act.

(3) The petitioner filed an application under Section 273-A of the Act before the Commissioner of Income-tax, seeking waiver of interest and penalty charged and levied for the aforesaid assessment years. The Commissioner granted relief to the extent of 50% only.

(4) Shri A. K. Mittal, learned counsel for the petitioner, has argued that the petitioner had voluntarily filed returns and had also paid tax on the returned income by way of self assessment for all the assessment years. Therefore, there was no justification for charging interest and for the levy of penalty. The petitioner also moved an application before the Commissioner of Income-tax under Section 154 of the Act, seeking complete relief. That application was, however, rejected by the Commissioner.

(5) The argument of Shri A. K. Mittal, learned counsel for the petitioner, is that the petitioner fulfilled all the conditions specified in Section 273-A of the Act and was, therefore, entitled to complete waiver of interest and penalty. Once the conditions were satisfied, exercise of discretion by the Commissioner could not be

arbitrary but should be just and fair. Power conferred by Section 273A was to be exercised correctly and properly. There was no justification in not waiving interest and penalty fully when all the requirements stood fulfilled. No good reasons were given by the Commissioner while reducing interest and penalty to 50% only. Since the petitioner had filed the returns voluntarily before the issuance of any notice to him, he was entitled to the benefit of waiver. He had made a full and true disclosure of his interest income received for different years. Compensation, enhanced compensation and interest were awarded on 13th February, 1991. Returns were filed on 31st March, 1992. The petitioner paid tax on the assessed income. Assessments were made by the Assessing Officer under Section 143(1) of the Act, thus, accepting the interest income shown by the petitioner.

(6) Shri A. K. Mittal, learned counsel for the petitioner, has further argued that the petitioner could not have imagined, prior to the receipt of compensation, that advance tax should be paid and returns must be filed in the earlier assessment years. Neither the amount of interest was anticipated nor received in the earlier relevant years. The petitioner could not, therefore, show the amount of interest as income earlier. Provisions of Section 139 (8) and 217 were not attracted for the purposes of charging interest. Shri Mittal has further contended that penalty was also not leviable as the petitioner did not file the returns earlier as interest had not been received.

(7) Shri Mittal has also drawn our attention to Circular No. F. No. 212/495/92-ITA. II, dated 2nd May, 1994 issued by the Central Board of Direct Taxes. The circular lays down that interest, under Sections 234A, 234B and 234C of the Act, shall be reduced or waived by the Chief Commissioner or Director General if any income had accrued or arisen for any previous year due to operation of any order of a Court, statutory authority or Government passed after the close of that previous year. It is, however, necessary that the relevant income is disclosed in the return of income for the relevant year and tax thereon is paid. Section 234A is similar to Section 139 (8) and Section 243B is akin to Section 217 of the Act. Shri Mittal has, therefore, submitted that the guide-lines laid down in the aforesaid circular regarding the waiver of interest should be followed by the authorities under the Act while considering the question of charging of interest under Sections 139 (8) and 217 of the Act. Shri Mittal has also submitted that interest for one year

(1st April, 1991 to 31st March, 1992) could at best be charged. The petitioner was not a regular assessee and the amount of compensation received by the petitioner was not taxable, being compensation received on the acquisition of agricultural land.

(8) Shri R. P. Sawhney, learned Senior counsel for the respondents, has, on the other hand, argued that the petitioner was under a legal obligation to file returns of income for different years. He filed returns on 31st March, 1992, though he had received compensation and interest from the State of Haryana on 13th February, 1991. Thus, the petitioner took unduly long time for filing the returns. The Commissioner, while deciding the petitioner's application under Section 273A of the Act, gave reasons for reducing the amounts of interest and penalty to 50% of the amount determined by the Assessing Officer. Power under Section 273A was to be exercised by the Commissioner in such a manner as he deemed just and proper. It was a discretionary power. The Commissioner rightly reduced interest and penalty to the extent of 50% only. He gave reasons in his order. It was not a case of total waiver as the petitioner paid tax after more than one year from the receipt of interest. Application filed by the petitioner before the Commissioner, under Section 154 of the Act, did not lie as there was no apparent mistake in the Commissioner's order. Shri Sawhney has also argued that the circular of the Board, relied upon by the petitioner, was not attracted as it related to the waiver of interest charged under Section 234A, 234B and 234C of the Act.

(9) The controversy, which emerges from the rival contentions, is regarding the scope of 273A of the Act. The said Section empowers the Commissioner to reduce or waive interest and penalty. There is no doubt that the power given to the Commissioner under Section 273A is discretionary. The Commissioner is given the discretion, when the requisite conditions envisaged by that Section are satisfied, that he may waive or reduce the penalty or the interest imposable under the Act. However, the exercise of discretion cannot be either arbitrary or capricious and has to be judicious and objective. If the conditions required for the exercise of discretion are satisfied, the discretion must be exercised judiciously by taking into consideration all the relevant facts. Satisfaction for the exercise of discretionary power must be an objective satisfaction and not a subjective satisfaction. Section 273A does not confer absolute discretion upon the Commissioner to pass any order which he pleases

to make. He is required to consider the application on merits. If the conditions for the exercise of the powers are fulfilled, he is obliged to exercise the discretion in favour of the assessee.

(10) Allahabad High Court in *Naresh Kumar Gupta v. Commissioner of Income-tax, Meerut, and another* (1), examined a matter under Section 273A of the Act. It was noticed that the Commissioner had not recorded any reason for refusing the relief to the petitioner for the total amount of interest. The order of the Commissioner was quashed and he was required to decide the claim for waiver of interest afresh on merits.

(11) A similar matter has been examined by the Bombay High Court also in *Rohit Kumar and Co. and others v. F. J. Bahadur, CIT and others* (2). It has been observed that Section 273A conferred a discretion on the Commissioner of Income-tax to waive or reduce penalty or interest. The conditions necessary are referred to in clauses (b) and (c) of that Section. In both the clauses, the common factor is the making of full and true disclosure of income voluntarily and in good faith.

(12) This Court had also an occasion to examine a matter under Section 18B of the Wealth Tax Act, 1957 in *Smt. Parkash Devi v. Commissioner of Wealth-tax, Jullundur* (3). Provisions in Section 18B of the Wealth Tax Act are similar to those in Section 273A of the Act. It was held that under Section 18B of the Wealth Tax Act, the following 5 conditions are required to be fulfilled :—

- “(1) that the returns were filed by the petitioner prior to the issuance of a notice to her under sub-section (2) of Section 14 of the Act ;
- (2) that these were filed voluntarily and in good faith ;
- (3) that the petitioner had made full and true disclosure of her net wealth ;
- (4) that she had co-operated in the inquiry relating to the assessment of her net wealth ; and
- (5) that she had paid or made satisfactory arrangements for the payment of the tax or interest payable in consequence

(1) 144 I.T.R. 556.

(2) 190 I.T.R. 93.

(3) 141 I.T.R. 122.

of an order passed under the Act in respect of the relevant assessment years.”

(13) It is, thus, clear that an assessee, while seeking waiver of interest and penalty, must show that he fulfilled all the conditions. These conditions are relevant for the exercise of discretion.

(14) Supreme Court in *Smt. Harbans Kaur v. Commissioner of Wealth-tax* (4), had an occasion to examine a matter regarding waiver of penalty under Section 18B of the Wealth Tax Act, which is analogous to Section 273A of the Act, whereunder also a similar discretion has been conferred on the Commissioner for either reducing the penalty or granting waiver of the entire penalty. The discretion is to be exercised in a reasonable and fair manner. It was noticed that the Commissioner had, in that case, indicated his own reasons for resorting to the power of reduction of the penalty instead of granting full waiver of the penalty. In these circumstances, it was held that the reasons indicated in the orders were not unjust and irrelevant.

(15) Supreme Court had again an occasion to examine a similar matter in *Prithipal Singh (DECD) v. Commissioner of Wealth-tax* (5). That was a case where penalty had been imposed under Section 18(1)(a) of the Wealth Tax Act on account of the appellant's failure to furnish the return of wealth within the time allowed in the relevant assessment year. The delay ranged from 10 months to 34 months. It was contended by the assessee that penalty should be waived because he had voluntarily and in good faith made full disclosure of his net wealth by filing the wealth tax returns for the relevant assessment years prior to issuance of any notice. He had also co-operated in the enquiry relating to the assessment proceedings. The Commissioner had observed that the assessee had obtained several adjournments on various grounds, some of which related to obtaining a valuation report. Looking to the series of adjournments, the Commissioner felt that the assessee had failed to co-operate with the Department. The Court was of the view that the Commissioner was perhaps a little harsh in not reducing the amount of penalty, especially when the total tax, involved in all the assessment years, was only about Rs. 7,000. The assessee had voluntarily filed the wealth tax returns before the issuance of any

(4) 224 I.T.R. 418.

(5) 234 I.T.R. 45.

notice. The Court, therefore, reduced penalty to 50% of what had been levied.

(16) On a consideration of the matter, emerging from the petitioner's pleas, it is found that the petitioner had received compensation and interest on 13th February, 1991. He filed returns of income for the relevant earlier years on 31st March, 1992. He, thus, took about a year for filing the returns. He was not a regular assessee under the Act. He was also not liable to pay income tax on the amount of compensation. There is considerable force in the petitioner's plea that he could not anticipate the receipt of interest unless it was finally determined by the competent authority. Therefore, the petitioner was not supposed to pay advance tax in the assessment year in which the interest accrued. In these circumstances, the petitioner cannot be held liable for penalty for failure to file the returns of income in the earlier years. The petitioner fulfilled all the conditions specified in Section 273A of the Act. He filed the returns prior to the issuance of notices to him by the Assessing Officer. He filed the returns voluntarily and in good faith. He also made full and true disclosure of his income assessable to tax. He cooperated during assessment and the disclosed income was accepted by the Assessing Officer. The amount of tax was paid by the petitioner. It would be, therefore, manifest that the petitioner did fulfil all the conditions under Section 273A of the Act. In this light, the levy of penalty is found to be not justified. The Commissioner failed to exercise discretion in a fair, just and judicious manner.

(17) Since the petitioner had received compensation in February, 1991 and he filed returns on 31st March, 1992, he is held liable to pay interest from 1st April, 1991 to 31st March, 1992. There is no justification in charging interest for the earlier period inasmuch as the petitioner fulfilled all the conditions laid down in Section 273A of the Act except for the delay in filing the return for a period of one year.

(18) In the result, the writ petition is partly allowed. Order, charging interest under Sections 139(8) and 217 of the Act, is partly quashed with the direction that interest shall be charged under the aforesaid Sections for one year from 1st April, 1991 to 31st March, 1992. Order levying penalty under Section 271(1)(a) of the Act, is quashed.

(19) No order as to costs.

J.S.T.