



(6)

IN THE HIGH COURT OF DELHI AT NEW DELHI

CWP 434 /1988

Date of Hearing : 19<sup>th</sup> September, 2002

Date of Decision : 27<sup>th</sup> September, 2002

J.K. SYNTHETICS & ORS... .. PETITIONERS  
THROUGH : MR. P.N. MONGA  
WITH MR. MANU MONGA & MR.  
NAVNEET NEGI, ADVOCATES

- VERSUS -

COMMISSIONER OF INCOME TAX & ORS. ... RESPONDENTS  
THROUGH : NEMO

CORAM :

THE HON'BLE MR. JUSTICE S.B. SINHA, CHIEF JUSTICE  
THE HON'BLE MR. JUSTICE A.K. SIKRI

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not? ✓
3. Whether the judgment to be reported in the Digest? ✓

S.B. SINHA, C.J.

1. This writ petition, is directed against orders dated 19<sup>th</sup> February 1986 and 10<sup>th</sup> September 1987 passed by respondents No. 2 and 1 respectively is declining to waive interest in terms of Section 139(8) of the Income-tax Act for the period 1<sup>st</sup> September 1975 to 30<sup>th</sup> September 1975.



2. The petitioner is a public limited company incorporated under the Companies Act, 1913, and having its registered office at Kamla Tower, Kanpur (UP). The petitioner is a multi-unit company having its offices/units inter alia at Kanpur, Delhi, Kota (Raj.), Nimbahera (Raj.), Bombay, Surat (Guj) etc. The petitioner company manufactures, inter alia, synthetic yarn, cement etc. The annual turnover in the year under consideration was Rs.40 crores. The financial year of the petitioner company was the calendar year 1974 ending on 31.12.1974; the assessment year being 1975-76 relevant to the present petition.

3. Under section 139 of the Income-tax Act 1961 (hereinafter referred to as the "Act") the petitioner company was required to file its return of income for the assessment year 1975-76 by 30<sup>th</sup> June, 1975.

4. By their application dated the 20<sup>th</sup> June 1975, the petitioners sought time for filing the return for the assessment year 1975-76 up to 30.9.1975 on the ground that the annual accounts had not been finalized and the same were to be approved at the Annual General Meeting to be held 28.6.1975, whereupon the appropriate authority was pleased to extend the time till 31.8.1975.

5. Since the return could not be filed within the said period, the petitioner moved a fresh application for extension of time 30.9.1975 and the I.T.O. after considering the relevant circumstances was pleased to extend the time till 30.9.1975.

6. The statutory audit of the company was completed on or about 14.8.1975, and the audited accounts along with the Audit Report were to be placed before the Annual General Meeting to be held on



29.9.1975. In the said A.G.M. the accounts were approved and the return was filed on 1.10.1975.

7. The petitioner company had also submitted an application under section 166 of the Companies Act to the Registrar of Companies, UP, Kanpur, on 13<sup>th</sup> August, 1975 praying for extension of time for holding the Annual General Meeting. The Registrar of Companies, Uttar Pradesh, Lucknow was pleased to accept the petitioner's request as sufficient and valid reason were shown to be existing therefor and granted extension up to 30<sup>th</sup> September, 1975 under proviso to sub-section (1) of Section 166 of the Companies Act for holding the Annual General Meeting of the petitioner company for the said year. The Assessing officer charged interest under section 139 (8) of the Act.

8. The petitioner filed an application for waiver of interest charged under Section 139(8) of the Act in terms of Rule 117A(v), of the Rules inter alia, on the grounds:

“(i) The statutory audit of accounts of the company was completed on 14/8/1975, but the ITO has allowed only 15 days time for filing the return after the audit was completed, which is too short a period for preparing the details for return to be filed in the case of a company with multiple units scattered at long distances.

(ii) The AGM for approving the accounts of the relevant period was held on 29/9/1975 and hence the return could not have been filed before that date.

(iii) That the then ITO had allowed extension of time for filing the return upto 30/9/1975, after he was satisfied that there was a reasonable cause for the delay.”

9. The Income Tax Officer waived interest charged for the period 1<sup>st</sup> July 1975 to 31<sup>st</sup> August 1975 i.e. for a period of 15 days upon



completion of the audit but declined to waive interest for the remaining period i.e. 1<sup>st</sup> September 1975 to 30<sup>th</sup> September 1975. On an appeal preferred by the petitioner herein, the C.J.T also took the view that delay in holding the AGM does not constitute sufficient cause for filing delayed returns within the meaning of the said Rules, so as to merit total waiver of interest chargeable under Section 139(8) of the Act.

10. Various orders passed by the authorities as stated in the writ petition are thus:

(a) The order of assessment was passed by the ITO, Kanpur on 23.9.1978 on a total income Rs.5,74,87,442. In this order, he levied interest u/s. 139 (8) at Rs.6,86,616 for the delay of 3 months from 1.7.1975 to 30.9.1975.

(b) The petitioner filed appeal against the assessment order and the CIT (A) New Delhi decided the same on 27.9.80. The ITO, Delhi, gave effect to this order vide order dated 30.10.80 and the interest levied u/s. 139(8) was reduced to Rs.3,07,729 for the same period of 3 months since the income was reduced to Rs.3,56,18,122.

(c) Thereafter, the ITO passed some rectification order/order to give effect to ITAT's order and the income was reduced to Rs.3,55,82,699 by order dtd. was reduced to Rs.3,07,113.

(d) By his order under section 154 of the Act, dated 18.10.1984, the income was enhanced to Rs.4,00,13,414 and consequently the interest u/s. 139 (8) was also enhanced to Rs.3,83,877.

(e) This order was taken in appeal before the CIT (A) who, by his order dtd. 26.2.1985, deleted the enhancement in interest following Board's Circular dated 8.9.1963.

(f) The ITO passed another order u/s. 155 (5) /154 on 16.5.1985 and enhanced the



income to Rs.4,00,089 and charged interest u/s. 139 (8) at Rs.3,84,423, ignoring the deletion of enhancement by the CIT (A) vide his order dated 26.2.1985.

(g) In yet another order passed on 12.8.1985 to give effect to ITAT's order, the income was enhanced to Rs.4,37,34,637. Consequently, he enhanced interest chargeable u/s. 139 (8) to Rs.4,48,344/-.

(h) On 9.9.85, he passed another order to give effect CIT (A)'s dated 19.11.1984 and reduced the total income to Rs.4,17,87,328 with consequent reduction of enhancement of interest under section 139 (8). Thus interest charged under section 139 (8) remained at Rs.4,14,606.

(i) On 19.2.1986, the ITO considered the petitioner's interest waiver application and waived interest for a period of 2 months out of 3 months charged by him after satisfying himself that there was a "sufficient cause for the delay of 2 months only and by taking the basis of income as determined on 9.9.1985 mentioned in the preceding Sub-para (h) and remained interest under section 139 (8) at Rs.1,38,203 ignoring the deletion of enhancement of interest by the CIT (A) by his order dated 26.2.1985 and also taking into account all the subsequent enhancements made in his orders dated 16.5.1985, 12.8.1985 and 9.9.1985."

11. The short question which arises for consideration in this writ petition is as to whether the authorities acted illegally and without jurisdiction in passing the impugned orders.

12. There cannot be any doubt whatsoever that the matter relating to waiver of interest has no nexus with the non-initiation of the proceedings for levy of penalty in terms of Section 271(1)(c) of the Income-tax Act. Both Sections 271 and 139(8) of the Act stand on a different footing. It is also true, as has been submitted by learned counsel



appearing on behalf of the respondents that interest is charged by way of compensation toward wrongful withholding of the just dues of the department. But it is also trite that an order under the aforementioned provision must be viewed having regard to the fact situation obtaining in each case.

13. Section 139(2), 139(8) and Rule 117A(v) are as under:

"S. 139 (2). "In the case of any person who in the Income-tax officer's opinion, is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income-tax officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within 30 days from the date of service of the notice, a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particular as may be prescribed: |

"Provided that, on application made in the prescribed manner, the Income-tax officer may, in his discretion, extend the date for furnishing the return and, notwithstanding that the date is so extended, interest shall be chargeable in accordance with the provisions of sub-section (8)."

S. 139(8). "(a) Where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then (whether or not the Income-tax officer has extended the date for furnishing the return under sub-section (1) or sub-section (2) the assessee shall be liable to pay simple interest at 12% per annum reckoned from the day immediately following the specified date to the date of the furnishing to the return or, where no return has been furnished, the date of completion of the assessment under section 144, on the amount of the tax payable on the



total income as determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source:

Provided that the income-tax officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section under this sub-section.

... ..

Rule 117 (A). The Income-tax officer may reduce or waive the interest payable under section 139 in the cases and in the circumstances mentioned below, namely,

(i) to (iv)... ..

(v) any case in which the assessee produces evidence to the satisfaction of the income-tax officer that he was prevented by sufficient cause from furnishing the return within time."

14. The Income Tax Officer in terms of his order dated 19<sup>th</sup>

February 1986 held:

"As discussed above the assessee has not furnished any evidence to show that it was prevented by sufficient cause from furnishing the return beyond 31/8/75. I, therefore hold that there is no justification for delay in filing the return for the period from 1/9/75 to 1.10.75. Taking into account the provisions of rule 119-A interest for the period of two months out of a total period of 3 complete months is accordingly waived."

15. The appellate authority, also in his order dated 10/14<sup>th</sup>

September 1987 observed:

"4.2 Another contention of the assessee is that the ITO had allowed time for filing the return upto 30.9.75 and penalty proceedings for late submission of return was not initiated by him. I find that this has been dealt with by the ITO in his order dated 19.2.1986. According to the ITO these facts do not constitute sufficient cause justifying waiver of interest. He has



observed in his order that in order to avail waiver of interest under Rule 117A (V), the assessee has prove that it was prevented by sufficient cause from furnishing the return in time otherwise interest under section 139 (8) of the Act is chargeable irrespective of the fact whether the extension for furnishing the return was allowed by the ITO or not. According to him, this legal position is obvious from the reading of section 139 (8) of the Act. Before me, no material has been furnished on behalf of the petitioner company to rebut this finding of the ITO. In my opinion allowing the extension of time for submission of the return and non initiation of penalty proceedings for late submission of return have nothing to do for determining the question of waiver of interest under Rule 117 A (V) of the IT Rules. Waiver of interest under Rule 117 A (V) can be considered only when in the opinion of the ITO the conditions for such waiver are satisfied."

16. Before the appellate authority, a contention was raised by the petitioner that the interest should have been charged with reference to the order passed by the Income Tax Officer dated 24<sup>th</sup> August 1984.

17. The expression "sufficient cause" is of wide amplitude. It is not necessary for the assessee to explain day-to-day delay. It may be true that if it is found that despite sufficient opportunity, the assessee does not taken pains to file a return within the prescribed period, the request for waiver of interest may not be acceded to.

18. The petitioner in this case has clearly stated that the statutory audit of the company was completed on 14<sup>th</sup> August 1975 and the Audit Report was to be placed in the Annual General Meeting to be held on 29<sup>th</sup> September 1975. The assessee satisfied the authorities under the Companies Act as to why it is not possible for them to hold the A.G.M. before 29<sup>th</sup> September, 1975. Only in the said Annual General Meeting, the accounts were approved whereupon only the return was filed on 1<sup>st</sup> October 1975.

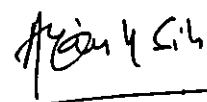


19. The concerned respondent, in our opinion, has failed to take into consideration the fact that unless and until the audited accounts were approved in the Annual General Meeting, the Income Tax Return could not be filed. Income Tax Return had been filed within two days from the approval of the Audited Report in the Annual General Meeting. The court can take judicial notice of the fact that Annual General Meeting cannot be held on a short notice. Sufficient time has to be given for the purpose of Annual General Meeting.

20. The Income Tax officer and the Commissioner of Income Tax, in our opinion, proceeded on a wrong footing in holding that Income Tax Return could have been filed and thereafter the same could have been revised in terms of sub-section (5) of Section 139 of the Act. Such an approach, in our opinion, is not correct, while considering the matter relating to waiver of interest. It appears that the respondents have taken too legalistic view of the matter. We, therefore, are of the opinion that the matter should be considered afresh by the Commissioner of Income Tax.

21. This writ petition is allowed. The impugned ~~orders dated~~ orders dated 10<sup>th</sup> September 1987 is set aside and the matter is remitted to the Appellate Authority for consideration of the matter afresh. In the facts and circumstances of the case, however, there shall be no order as to costs.

  
CHIEF JUSTICE

  
A.K. SIKRI, JUDGE