



IN THE HIGH COURT OF DELHI

CWP No.776/1978

Date of Decision: 12 December 2002

Brig. Anant Singh.....Petitioner

through: Mr.R.S.Suri with  
Ms.Sangeeta Pandey,  
Advocates

Versus

Commissioner of Income-tax  
Delhi-III & Ors.....Respondents

through: Mr.R.C.Pandey,  
Sr.Standing Counsel with  
Mr.Ajay Jha, Advocate

CORAM:

THE HON'BLE MR.JUSTICE D.K.JAIN  
THE HON'BLE MR.JUSTICE MAHMOOD ALI KHAN

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 should be reported in the Digest ?

D.K.JAIN,J. (Oral)

By this writ petition the petitioner, hereinafter referred to as the assessee, seeks to impugn an order, dated 29 January 1976, passed by the Income-tax Officer, declining to waive/reduce the interest charged under Section 215 of the Income-tax Act, 1961 (for short the Act) as also the order dated 12 October 1977 passed by the Commissioner of Income-tax, New Delhi, affirming the order passed by the Income-tax Officer.

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2. Shorn - of unnecessary details, the material facts are as follows:

The assessee is an individual, deriving income from pension, house property and profession. For the assessment year 1972-73, for which the relevant previous year ended on 31 March 1972, he filed his return of income on 4 December 1972. Assessment for the said assessment year was completed on 10 March 1975. Since, in the opinion of the Income-tax Officer, there was default on the part of the assessee in paying the requisite amount of advance tax and there was delay in filing the return as well, he levied interest under Sections 215 and 139(8) of the Act. Although non-waiver of interest under section 139(8) of the Act is also challenged in this petition, but learned counsel for the petitioner has stated before us that he is confining the petition to the non-waiver of interest charged under Section 215 of the Act.

3. The assessee moved an application before the Income-tax Officer under Rule 40 of the Income-tax Rules, 1962 (in short the Rules), praying for waiver of the interest charged. Vide the aforementioned order, assessee's application was rejected on the ground that the delay in completing the assessment for the relevant assessment year occurred because of the search conducted at the premises of the assessee on 11 July

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1972 and because of pendency of certain inquiries in connection with the incriminating evidence recovered during the course of the said search. Aggrieved, the assessee preferred a revision petition before the Commissioner of Income-tax, but without any success. The relevant portion of the order passed by the Commissioner reads as under:

"I have looked into the records of the case. I am of the view that the circumstances of the case were such that the assessment could not have been completed within a period of one year from the date of the filing of the return. The case necessitated thorough investigation, in view of the search conducted at the premises of the assessee. Since the delay cannot in the completion of the assessment be attributed to the Department, the ITO was justified in rejecting the request of the assessee for waiver/reduction of interest chargeable u/s 215."

4. Hence the present petition.
5. No reply affidavit has been filed on behalf of the respondents despite the fact that the petition has been pending for over two decades. We have accordingly heard learned counsel for the parties.
6. It is submitted by Mr.R.S.Suri, learned counsel for the petitioner, that both the authorities below having found that the delay in completing the assessment was not attributable to the assessee, the interest charged under Section 215 should have been waived. It is urged that there is not even an

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allegation against the assessee that he did not cooperate in the investigation conducted by the Revenue, which resulted in the delay in completion of assessment. It is, thus, asserted that the Income-tax Officer and the Commissioner have failed to exercise the discretion vested in them under Rule 40 judicially. Mr.R.C.Pandey, learned senior standing counsel for Revenue, on the other hand, while supporting the impugned orders, would submit that since the question of waiver of interest is purely a discretionary matter, this Court may not like to interfere with the impugned orders.

7. We are unable to persuade ourselves to agree with learned counsel for the Revenue. Rule 40, insofar as it is relevant for our purpose, reads as follows:

"The Income-tax Officer may reduce or waive the interest payable under section 215 or section 217 in the cases and under the circumstances mentioned below, namely:-

- (1) When the relevant assessment is completed more than one year after the submission of the return, the delay in assessment not being attributable to the assessee.

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8. From a bare reading of sub-rule(1) of Rule 40 it is clear that for the purpose of reduction or

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waiver of the interest under Section 215, what is required to be seen is as to whether the assessee is responsible for causing delay in completion of the assessment. If it is found that it was on account of his conduct that the assessment could not be completed within the said period of one year, the interest charged under Section 215 may not be waived. In the present case, however, we find that both the said authorities have not considered the assessee's application in its correct perspective. Though we find that in the order passed by the Income-tax Officer there is a bald observation that the delay was attributable to the assessee but the said observation is without any basis. The mere fact that the delay in completion of assessment occasioned because of the search conducted by the Revenue at the premises of the assessee would not per se show that the assessee was responsible for the delay. How and in what manner the assessee was responsible for delaying the proceedings must be indicated in the order refusing to reduce or waive the interest charged. It is also evident from the afore-extracted portion of the order of the Commissioner that he has also laid emphasis on an irrelevant fact that there was no delay in completion of assessment, which could be attributed to the Department. In both the orders we do not find even a

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whisper as to how the delay in completion of assessment is attributed to the assessee.

9. We are of the considered view that both the authorities have failed to consider the application of the assessee for waiver of interest in accordance with law and, therefore, the impugned orders cannot be sustained.

10. Having held so, in the normal course we would have remitted the matter back to the Assessing Officer for consideration of the assessee's application dated 28 November 1975 afresh. However, keeping in view the amount of interest involved, stated to be less than Rs.2,000/- and the apprehension of Mr.R.C.Pandey, learned senior standing counsel for the Revenue, to the effect that over 25 years old assessment record of the assessee may not now be traceable, we are of the view that no useful purpose would be served by remitting the matter back to the Income-tax Officer, more so when none of the authorities have found the assessee to be responsible for the delay in completion of assessment. As noticed above, even in these proceedings, the factual averments made in the petition have not been countered by filing an affidavit in opposition. Consequently, we allow the petition; quash both the impugned orders and hold that the petitioner is not liable to pay interest

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under Section 215 of the Act. Rule is made absolute.

11. The petition stands disposed of with no order  
as to costs.

*D.K. Jain*  
D.K. JAIN, J.

12 December 2002  
"v"

*Mahmood Ali Khan*  
MAHMOOD ALI KHAN, J.