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CW 2009/1988

HIGH COURT OF DELHI : NEW DELHI

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CW No.2009/1988

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Date of Decision : October 23, 2003

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M/S. J.K. SYNTHETICS LTD.Petitioners

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Through:Mr. P.N. Monga, Adv.
with Mr.Manu Monga &
Mr.Navneet Negi, Adv.

Vs.

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COMMISSIONER OF INCOME TAXRespondents

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Through:Mr. R.C. Pandey, Adv. with
Mr.Ajay Jha, Advocate.

CORAM:

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THE HON'BLE MR.JUSTICE D.K. JAIN

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THE HON'BLE MR.JUSTICE MADAN B. LOKUR

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.

Challenge in this writ petition is to the validity of
the order, dated 10 September 1987, passed by the



Commissioner of Income-tax Delhi (Central)-I, New Delhi (hereinafter referred to as "the Commissioner"), affirming the order passed by the Income-tax Officer on 6 May 1985, declining to waive/reduce interest charged from the petitioner (hereinafter referred to as 'the assessee'), under Section 215 of the Income-tax Act, 1961 (for short 'the Act'), because of short fall in the payment of Advance-tax.

2. Shorn of unnecessary details, the background facts, relevant for the present purpose are as follows:

The petitioner, a public limited multi-unit company is engaged in the business of manufacture of yarn, cement, etc. For the assessment year 1975-76, for which the relevant previous year ended on 31 December 1974, the assessee filed its return of income on 1 October 1975 declaring a total income of Rs.3,88,63,416/-. Assessment for the said assessment year was completed on 23 September 1978. Since the Income-tax Officer was of the view that there was default on the part of the assessee in paying the requisite amount of advance tax, he levied interest under Section 215(1) of the Act for the period from 1 April 1975 to 31



August 1978. The interest so charged vide order dated 23 September 1978 was Rs.52,84,145/-. However, on account of appeal effect, the said amount of interest was reduced to Rs.6,14,226/-. Subsequently, by virtue of orders passed by the Income-tax Officer, the amount of interest was enhanced in the first instance from Rs.6,14,226/- to Rs.9,93,582/- and thereafter to Rs.14,43,468/- and finally to Rs.40,65,131/-.

3. On or about 19 September 1981, the assessee moved an application before the Income-tax officer under Rule 40 of the Income-tax Rules, 1962 (for short 'the Rules'), praying for waiver of the interest so charged. Vide orders dated 6 May 1985 and 5 February 1987, the Income-tax Officer rejected assessee's application on the ground that since the return was filed on 1 October 1975, the interest attributable to the period beyond one year from the date of submission of the return only qualifies for waiver and further the interest having been charged for the period from 1 April 1975 to 13 November 1975, it is less than one year from the date of the submission of the return. Aggrieved,



the assessee preferred a revision petition before the Commissioner but without any success. Hence the present petition.

4. No reply affidavit, in opposition, has been filed on behalf of the respondents. The writ petition has been pending for over a decade. We have accordingly heard Mr.P.N. Monga, learned counsel for the petitioner and Mr.R.C. Pandey, learned senior standing counsel for the Revenue.

5. It is strenuously urged by Mr.Monga that none of the authorities below has found the delay in completion of the assessment as attributable to the assessee and, therefore, the said authorities should have exercised their power under Rule 40 and waived the interest charged under Section 215 of the Act. It is asserted that there is not even an allegation against the assessee that he did not cooperate in the assessment proceedings, which resulted in the delay in completion of the assessment for the relevant assessment year. It is thus, submitted that the Income-tax Officer as well as the Commissioner have failed to exercise the



discretion vested in them under the said Rule judiciously. Mr. R.C. Pandey, on the other hand, 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 in judicial review.

6. We are unable to agree with learned counsel for the Revenue.

7. Section 215(4) of the Act empowers the Assessing Officer (upto 31 March 1988) to waive or reduce the amount of interest chargeable under Section 215, under five circumstances, enumerated in Rule 40 of the Rules. As all the five sub-rules deal with different situations, and are independent of each other, it is unnecessary to refer to all of them. For the present purpose, Sub-rule (1) is relevant, which reads thus:

"40. The (Assessing 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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XXXXXXXXXXXXXXXXXXXX.”

8. From a bare reading of sub-rule 1 of Rule 40, it is clear that the twin conditions necessary for reduction or waiver of interest under Section 215 are: (i) that the assessment should have been completed more than one year after the submission of the return and (ii) the delay in the assessment is not attributable to the assessee. The discretion vested in the Assessing Officer, under Section 215(4) of the Act, read with Rule 40 is undoubtedly quasi-judicial and is coupled with a duty to consider whether circumstances of the case warrant waiver or reduction of interest. He is under an obligation to objectively consider the circumstances and find out whether the applicant is entitled to the waiver or reduction. A mechanical consideration of the application defeats the very purpose and object of the legislation to grant relief to an assessee against the rigour of the provisions for charging interest



under Section 215, in the circumstances prescribed in Rule 40. The language of Rule 40(5), which is couched in wide terms, leaves little doubt that the provisions contained in Sub-section (4) of Section 215 are benevolent. Therefore, when an assessment is completed after the expiry of one year from the date of filing of return and an assessee applies for waiver/reduction of interest charged under Section 215 of the Act, 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.

9. Thus, the short question which arises for our consideration is as to whether in the instant case, the Income-tax Officer exercised the discretion vested in him under Rule 40, keeping in view the afore-mentioned principles, by taking into consideration all the relevant facts.

10. Having given our serious consideration to the facts



in hand, we find that both the authorities have failed to consider the assessee's application in its correct perspective. In both the orders, we do not find even a whisper indicating that the delay in completion of the assessment within a period of one year was attributable to the assessee. The Income-tax Officer had declined to waive/reduce interest on the ground that: (i) since the return was filed on 1 October 1975, delay upto this date is attributable to the assessee and the interest for the period beyond one year from the date of submission of return qualifies for waiver and (ii) the interest has been charged for the period 1 April 1975 to 13 November 1975, which period is less than one year from the date of submission of the return. Laying emphasis on a circular issued by the Central Board of Direct Taxes, on 9 June 1965, the Commissioner has affirmed the view taken by the Income-tax Officer that the interest beyond the period of one year from the date of filing of return may be waived. As regards the waiver of interest for the period from 1 October 1976 to 23 September 1978, though the Commissioner has observed that the details/statement



asked for were furnished in piecemeal yet it falls short of a finding that delay in making assessment was attributable to the assessee. We have no hesitation in holding that in the absence of such a finding, dismissal of assessee's application for waiver of interest cannot be said to be in accordance with law. In this view of the matter, the impugned orders cannot be sustained.

11. Consequently, we allow the writ petition; set aside the impugned orders and remit the matter back to the Commissioner for consideration of assessee's application for waiver/reduction of interest charged under Section 215 of the Act afresh. Rule is made absolute.

However, in the facts and circumstances of the case, there will be no order as to costs.


D.K. JAIN, J


MADAN B. LOKUR, J

OCTOBER 23 ,2003

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