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AMIN CHAND PAYARELAL

v.

INSPECTING ASSTT. COMMISSIONER, INCOME TAX AND ORS.

SEPTEMBER 5, 2006

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[ASHOK BHAN AND MARKANDEY KATJU, JJ.]

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*Income Tax Act, 1961—Sections 139(4) and 271(1)(a)—Filing of return beyond the extended period under s.139(4)—Penalty—Imposition of—Justification—Held: Provision that assessee may file return any time before assessment is made would not absolve assessee from the liability to pay penalty—Even if assessee deposits interest for late filing, penalty, could be levied under s.271(1)(a).*

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The question which arose for consideration in the present appeal was that when return has been filed beyond the extended period for filing under section 139(4) of the Income Tax Act, 1961 and the assessee has paid interest for the late filing, whether penalty under section 271(1)(a) of the Act could be levied thereon.

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Dismissing the appeal, the Court

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**HELD:** Sub-section (4) of Section 139 of the Income Tax Act, 1961 provides for a situation where the returns are not filed by an assessee within the time allowed or within the extended period for filing such returns. Merely because sub-section (4) of Section 139 enable the assessee to file his return at any time before the assessment is made, it does not mean that his liability to pay penalty under Section 271(1)(a) is erased. The penalty could be levied under Section 271(1)(a) of the Act. The impugned judgment of the Division Bench of High Court that mere deposit of interest would not absolve the assessee from its liability to pay the penalty under section 271(1)(a) of the Act is upheld. [735-A, G; 736-A-B]

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*Commissioner of Income Tax, A.P. v. M. Chandra Sekhar, (1985) 151 ITR 433, distinguished.*

*Pradip Lamps Works v. Commissioner of Income Tax, (2001) 249 ITR 797, relied on.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4114 of 2001. A

From Judgment and Order dated 28.9.2000 of the High Court of Calcutta in F.M.A. No. 1160/1990.

Anil Roychowdhury, Raja Chatterjee, Sutapa Roychowdhury, Sachin Das and G.S. Chatterjee for the Appellant. B

Harish Chandra, Preetesh Kapur, Arijit Prasad and B.V. Balram Das for the Respondents.

The Judgment of the Court was delivered by

**BHAN, J.** This appeal is directed against the order dated 28th September, 2000 passed by a Division Bench of the High Court of Calcutta in FMA No. 1160 of 1990 whereby the Division Bench has set aside the order passed by the Single Judge of the same High Court and dismissed the writ petition filed by the writ petitioner-appellant. C

Brief facts giving rise to file the present appeal by special leave are as follows: D

The appellant filed a writ petition in the High Court, *inter alia*, seeking an appropriate writ, order or directions and/or to withdraw the order dated 26th September, 1974 passed by the Commissioner of Income Tax, Central and the orders of assessment and penalty proceeding under Section 271 (1)(a) of the Income Tax Act, 1961 (for short "the Act") and the demand notice issued under Section 156 of the Act and also the order dated 7th of October, 1974 imposing penalty. E

The learned Single Judge before whom the writ petition came up for hearing allowed the writ petition and held that the penalty imposed by the Authorities was not in accordance with law and consequently the order imposing penalty and demand notice for realization of penalty for the assessment years 1959-60 to 1965-66 was quashed. F

The learned Single Judge allowed the writ petition on the grounds(a) that the imposition of penalty was without jurisdiction in view of the fact that interest had been paid for late filing of the returns for the aforesaid years; and (b) that the penalty under Section 271(1)(a) of the act could not be imposed by the Inspecting Assistant Commissioner of Income Tax as he had no jurisdiction to do so and, only the Income tax Officer was competent to H

A impose penalty as per provisions of Section 271(1)(a) of the Act.

During the course of arguments, counsel appearing for the respondent-assessee before the Division Bench of the High Court, the appellant herein, did not dispute the jurisdiction of the Inspecting Assistant Commissioner of the Income Tax to impose the penalty for not filing the returns within the extended period. The Division Bench recorded the following findings:

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“....However, before us the learned advocate for the writ petitioner/respondent did not question of jurisdiction of the Inspecting Assistant Commissioner of the Income Tax to impose penalty on the writ petitioner for not filing the return within the extended time, that was granted by the concerned authority.....”

On the afore-mentioned first point, the Division Bench came to the conclusion that mere deposit of interest would not absolve the assessee from its liability to pay the penalty under Section 271(1)(a) of the Act. To appreciate the contention it is necessary to understand the scheme enacted in Section 139 of the Act, as it stood at the relevant time. Broadly, the scheme envisages a voluntary return by the assessee under sub-section (1) of Section 139, a return consequent upon a notice by the ITO under sub-section (2) of Section 139 and a return in the circumstances mentioned in under sub-section (4) of Section 139. We are not concerned with the return filed under sub-section (1) or (3) of Section 139. We are concerned with the situation where the return has been filed under Section 139(4) of the Act which at the relevant time read as under:

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“(4)(a) Any person who has not furnished a return within the time allowed to him under sub-section (1) or sub-section (2) may, before the assessment is made, furnish the return for any previous year at any time before the end of the period specified in clause (b), and the provisions of sub-section (8) shall apply in every such case.

(b) The period referred to in clause (a) shall be-

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- (i) where the return relates to a previous year relevant to any assessment year commencing on or before the 1st day of April, 1967, four years from the end of such assessment year;
  - (ii) where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1968, three years from the end of the assessment year;

- (iii) where the return relates to a previous year relevant to any other assessment year, two years from the end of such assessment year," A

Section 271 provides for levy of penalty under sub-clauses (a)(b) and (c) of sub-section (1) of Section 271. In the present case, the penalty has been levied under Section 271(1)(a), as it stood at the relevant time and the same reads as under: B

"271. (1) If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that any person

- (a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of Section 139 or by notice given under sub-section (2) of Section 139 or Section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of Section 139 or by such notice, as the case may be, or" C  
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Under this provision, in essence, three situations are contemplated in which penalty can be imposed, i.e., (i) where the assessee has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of Section 139; (ii) or where the assessee has without reasonable cause failed to furnish the return of total income which he was required to furnish by notice given under sub-section (2) of Section 139 or Section 148; and (iii) or where the assessee has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of Section 139. E

The following chart would indicate the dates on which the returns were required to be filed, the extended time/date within which they were to be filed and the dates on which they were actually filed. F

A	Year	Date on which the return ought to have been filed	The time was extended to file the return	Date on which return actually filed
	1959-60	18.06.1959	14.11.1959	04.02.1961
	1960-61	20.06.1960	01.10.1962	30.08.1962
B	1961-62	30.06.1961	31.08.1962	05.10.1962
	1962-63	04.08.1963	31.08.1962	05.10.1962
	1963-64	Nil	No. appln.	07.12.1964
C	1964-65	07.06.1964	30.09.1964	18.01.1965
	1965-66	21.07.1965	No. appln.	21.01.1966

Admittedly, the appellant did not file the return either within the time specified in the statute for doing so or within the extended period of time. The returns were filed beyond the extended period for filing the return. Interest on the amount due and penalty are two different and distinct concepts. Interest is the accretion on the capital whereas the penalty is a punishment imposed on a wrong-doer.

Counsel appearing for the assessee in support of the contention placed reliance on a judgment of this Court in *Commissioner of Income Tax, A.P. v. M. Chandra Sekhar*, (1985) 151 ITR 433. In the said case, their Lordships were dealing with return filed under Section 139(1) of the Act whereas in the present case the returns had been filed under Section 139(4). The assessee was absolved of his liability to pay the penalty under proviso to Section 139(1). It was observed:

“In the instant case, the extension was a matter falling within Sub-section (1) of Section 139, and the returns furnished by the assessee must be attributed to that provision. They were not returns furnished within the contemplation of Sub-section (4) of Section 139. Therefore, the decision, of the Gujarat High Court in *Addl. CIT v. Santosh Industries*, (1974) 93 ITR 563, of the Karnataka High Court in *Nagappa v. ITO*, (1975) 99 ITR 32 of the Andhra Pradesh High Court in *Poorna Biscuit Factory v. CIT*, (1975) 99 ITR 41, of the Orissa High Court in *CIT v. Gangaram Chapolia*, (1976) 103 ITR 613 [FB] and of the Allahabad High Court in *Metal India Products v. CIT*, (1978) 113 ITR 830 FB cannot be invoked in the instant case. They are cases dealing with a return filed in the circumstances mentioned in Sub-section (4)

of Section 139.”

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Meaning thereby that cases falling under Section 139(1) and 139(4) have to be dealt with differently. Sub-section (4) of Section 139 of the Act provides for a situation where the returns are not filed by an assessee within the time allowed or within the extended period for filing such returns. In the present case, the returns in question had not been filed either within the time allowed under the Act or within the extended period. The reliance placed on the aforesaid judgment lends no assistance to the appellant as the principle on which the aforesaid decision has been rendered is distinguishable and cannot be applied to the admitted facts in the present case.

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In the present case, as mentioned above, the return was filed under sub-section (4) of Section 139 of the Act. The question is whether penalty under Section 271(1)(a) could be levied on a return filed under Section 139(4) fell for consideration before this Court in *Pradip Lamps Works v. Commissioner of Income Tax*, (2001) 249 ITR 797. The question posed in that case was as under:

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Question No. 2:

“Whether, on the facts and the circumstances of the case, the Tribunal was right in holding that notwithstanding that the return of Income had been filed on February 6, 1961, i.e., within the period permissible under Section 139(4) of the Income Tax Act, 1961, the imposition of a penalty was justified as there was a delay for the purpose of section 271(1)(a) of the Income Tax Act, 1961?”

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It was answered in the following terms:

“So far as the second question is concerned, the only submission is that since the assessee was entitled to and did file his return before making the assessment, no penalty should be levied under Section 271(1)(a), even though the return was filed beyond the prescribed date. We do not think that this contention is sustainable in law. Merely because, sub-section (4) of Section 139 enables the assessee to file his return at any time before the assessment is made, it does not mean that his liability to pay penalty under Section 271(1)(a) is erased. We affirm the opinion of the High Court on this question as well.”

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We respectfully follow the law laid down in *Pradip Lamps Works's* case

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**A** (supra). There are number of High Courts who have taken the same view.

We hold that the penalty could be levied in the present case under Section 271(1)(a) of the Act.

**B** For the reasons stated hereinabove, we do not find any merit in this appeal and dismiss the same. The impugned judgment of the Division Bench is affirmed. Parties to bear their own costs.

N.J.

Appeal dismissed.