

CIT should confine himself to only those matters as are laid down in sec. 273A for waiving off penalty

Summary – The High Court of Punjab and Haryana in a recent case of Dr. Santosh Rani Batra., (the Assessee) held that while considering an application for waiver of interest and penalty under section 273A, the Commissioner should confine his consideration to factors referred to in section 273A and to no other factor.

Facts

- The assessee filed income tax returns for the years 1985-86 to 1989-90 voluntarily without any notice under section 139 or 148.
- The Assessing Officer levied penalty and interest and framed an assessment.
- The assessee filed an application under section 273A for waiver or refund of penalty and interest.
- The Commissioner rejected the application filed by the assessee on ground that during survey proceedings against the husband of assessee, certain accounts and fixed deposits were discovered in the names of the assessee and her husband and it was only after detection of concealed income, assessee filed her return.
- On writ:

Held

- Section 273A commences with the words 'notwithstanding anything contained in this Act' thereby postulating that the Commissioner shall while considering an application under section 273A confine his consideration to factors referred to in section 273A and to no other factor. Thus, if the Commissioner while exercising power under section 273A places sole reliance upon grounds that led to imposition of penalty and interest, such an exercise of power, would in essence, be contrary to power conferred by section 273A. While exercising power under section 273A the Commissioner is required to confine his consideration to factors set out in the sub-sections of section 273A and to no other factor.
- A perusal of the impugned order reveals that before passing the order, the Commissioner obtained a report dated 23-1-1982 from the Deputy Commissioner of income tax, Chandigarh Range, Chandigarh, which clearly records that income tax returns were filed voluntarily. The Commissioner of income-tax has failed to consider that no notice under section 139(8) of section 239 or section 148 was ever served upon the petitioner before she filed her returns. The Commissioner has while holding that the return was not voluntary as it was filed only after it was called for by the Income-tax department, ignored the fact that no such notice or order is available on record.

- In view of what has been recorded hereinabove, the writ petition is allowed, the impugned order is set aside and the matter is remitted to the Commissioner, Patiala, for deciding the application filed under section 273A afresh and in accordance with law.