(2010) 01 MAD CK 0189

In the Madras High Court

Case No : Tax Case (Appeal) No. 619 of 2004 (A.Y. 1986-87)

CIT APPELLANT

Vs

Arunajothi Balasubramanian RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:
Income Tax Act, 1961 — Section 139, 139(1), 139(2)

Citation : (2012) 345 ITR 81

Hon'ble Judges : P.P.S. Janarthana Raja, J;D. Murugesan, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant;

Final Decision : Dismissed

Judgement

D. Murugesan, J.—Though notice was served on the respondent and the name of the respondent is also printed in the cause list, none appears for the respondent. This tax case (appeal) has been filed at the instance of the Revenue raising the following substantial question of law :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is eligible to carry forward share of loss from the association of persons, although the association of persons had filed its return beyond the time prescribed u/s 139 of the Act ?

2. The appeal concerned about the return filed by the respondent for the assessment year 1986-87. It appears that the assessee has claimed to carry forward the share of loss from the association of persons (AOP) determined in the previous year to be set off for the future years The assessing officer, on facts, held that in view of the fact that association of persons did not file the return of income for the assessment year 1986-87 u/s 139(1) of the Act or within such further time as granted by the Department, the assessee is not entitled to carry forward the loss and to claim set off in the subsequent years.

3. This order was carried on appeal to the Commissioner of income tax (Appeals)-

II, by the assessee. The Commissioner of Income Tax (Appeals), while considering the factual aspects, had observed that "from the admitted facts as recorded in the case of M/s. M.G. Enterprises as extracted herein above, it is clear that the association of persons did file its return within the time extended by the assessing officer and, hence, the assessee is fully entitled to claim and be allowed to the benefit of carry forward of the loss determined in that case by the assessing officer".

4. The above factual finding is rendered on the ground that a notice u/s 139(2) was served on the association of persons on 19-9-1986, and the association of persons filed an application for extension of time in the prescribed Form No. 6 on 19-2-1987, along with a letter dated February 18, 1987, requesting time till 28-2-1987. Within the above time granted, the return was filed on 27-2-1987. Aggrieved by the above finding of the Commissioner of income tax (Appeals), the appellant-Revenue filed an appeal before the Tribunal, which also concurred with the finding of the Commissioner of income tax (Appeals). Hence, the present appeal by the Revenue before this court.

5. We have heard Mr. T. Ravikumar, learned counsel appearing for the appellant-Revenue. The learned counsel would submit that the association of persons had, in fact, filed the application for extension of time beyond the prescribed period. If that be so, the assessing officer has no right to grant extension of time and if that be the case, even if the association of persons had filed its return in the extended period, such return is not valid and, therefore, the assessee is not entitled to carry forward the share of loss in the association of persons to the subsequent years. Therefore, the learned counsel submitted that factually both the Commissioner of Income Tax (Appeals) and the Tribunal are in error.

6. We have carefully considered the above submission and we are unable to accept the same. The finding as to the filing of the return within the extended period given by the Commissioner of income tax (Appeals) and by the Tribunal cannot be gone into, as it is being a factual finding. Nevertheless, as far as the jurisdiction of the assessing officer even to grant extension is concerned, though the association of persons has made a request for extension of time only after the period was over, we are not inclined to entertain the said submission, as it was not raised either before the Commissioner of Income Tax (Appeals) or before the Tribunal.

7. That apart, we are also not provided with the details as to the last date for filing the return in this case to claim that the request for extension of time was made after the said date. In the absence of those details as well, we are not inclined to entertain and consider the grievance of the appellant-Revenue as to whether the assessing officer could have granted the extension of time. We should proceed on the basis that an application for extension was filed and that was granted and the association of persons had filed the return within the extended period. In view of the above, we find no merit in the substantial question of law and the same is answered against the Revenue and in favour of

the assessee. The tax case (appeal) is dismissed. No costs.