(1997) 02 MAD CK 0178

In the Madras High Court

Case No : Tax Case No. 562 of 1983 (Reference No. 302 of 1983)

Commissioner of Income Tax APPELLANT

Vs

A. Vadivel Chettiar RESPONDENT

Date of Decision : 06-02-1997

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 274, 274(2), 28

Citation : (1999) 236 ITR 910

Hon'ble Judges : S.M. Siddick, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

K. A. Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following question, for the opinion of this court, u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as the "Act" :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Inspecting Assistant Commissioner had no jurisdiction to impose penalty u/s 271(1)(c) of the Income Tax Act, 1961, on January 27, 1978, as section 274(2) of the Income Tax Act has been omitted by the Taxation Laws (Amendment) Act of 1975 with effect from April 1, 1976 ?"

The assessee is a Hindu undivided family. For the assessment year 1971-72, corresponding to the previous year ended on March 31, 1971, the assessee filed a return on June 2, 1973, showing an income of Rs. 7,382. The assessment was completed on March 21, 1974, on a total income of Rs. 66,880. Thereupon, the Income Tax Officer initiated proceedings for imposition of penalty u/s 271(1)(c) of the Act and referred the matter to the Inspecting Assistant Commissioner u/s 274 of the Act. The Inspecting Assistant Commissioner issued a notice to the assessee to show cause why penalty should not be imposed and after considering the reply by the assessee, imposed a penalty of Rs. 32,000 u/s 271(1)(c) of the Act. The assessee appealed to the Appellate Tribunal, contending that subsection (2) of section 274 of the Act providing for a reference to the Inspecting Assistant Commissioner having been omitted with effect from April 1, 1976, by the Taxation Laws (Amendment) Act, 1975, the power of the Inspecting Assistant Commissioner to proceed with the matters already referred was not saved and, therefore, there is no jurisdiction to impose the penalty. The Appellate Tribunal accepted the contention of the assessee. A similar question came up for consideration before this court in Commissioner of Income Tax Vs. Seth Purushothamdas Dwarkadas, wherein it was held that when the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961, were referred to the Inspecting Assistant Commissioner by the Income Tax Officer, section 274(2) was not amended and, therefore, the Inspecting Assistant Commissioner had jurisdiction to complete the penalty proceedings, even though the order u/s 271(1)(c) of the Act was passed on March 30, 1977, i.e., after the amendment of section 274(2) by the Taxation Laws (Amendment) Act, 1975, which came into effect from April 1, 1976. A similar view was also taken by the Supreme Court in Commissioner of Income Tax, Bangalore Vs. Smt. R. Sharadamma, . In view of the foregoing decisions, the Tribunal was not correct in holding that the Inspecting Assistant Commissioner had no jurisdiction to impose penalty u/s 271(1)(c) of the Act. Since the Inspecting Assistant Commissioner is having jurisdiction to levy the penalty, the Tribunal is directed to dispose of the penalty appeal on merits. In that view of the matter, the question referred to us is answered in the negative and in favour of the Department. No costs.

