
(1988) 11 BOM CK 0020

In the Bombay High Court

Case No : Income-tax Reference No. 33 of 1976

Commissioner of Income Tax

APPELLANT

Vs

B.V. Sabunani

RESPONDENT

Date of Decision : 15-11-1988

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(1), 143(3), 154, 155

Citation : (1989) 177 ITR 56

Hon'ble Judges : T.D. Sugla, J;S.P. Bharucha, J

Bench : Division Bench

Judgement

Sugla, J.—The question of law referred to this court in this reference at the instance of the Revenue is:

"Whether, on the facts and in the circumstances of the case, an appeal to the Appellate Assistant Commissioner against the levy of interest u/s 139 of the Income Tax Act, 1961, is competent ?"

2. It is common ground that the assessment of the assessee for the assessment year was completed u/s 143(3) on a total income of Rs. 83.778. The assessee had challenged the addition of Rs. 48,000 included therein and also the interest charged u/s 139(1). The addition of Rs. 48,000 was deleted by the Appellate Assistant Commissioner but he refused to interfere as regards levy of interest u/s 139(1) on the ground that no appeal lay against the levy of interest u/s 139(1). The Tribunal, on further appeal by the assessee, accepted the assessee's contention and held that the appeal was competent against the levy of interest u/s 139(1).

3. Shri Jetley, learned counsel for the Department, has placed reliance on this court's Full Bench decision in the case of Commissioner of Income Tax, Bombay City-I Vs. Daimler Benz A.G., , in support of the proposition that unless the assessee was denying his liability to be assessed under this Act meaning thereby liability to the levy of interest u/s 139(1), the appeal would not be competent,

for this purpose, Shri Jetley took us through the relevant portion of the judgment starting from page 977 of the Reports up to page 980. It is, however, seen that the submission made by Shri Jetley is not wholly correct. No doubt, it has been laid down in that case that an appeal against the levy of interest u/s 18A(8) of the Indian Income Tax Act, 1923, would lie only if the assessee was challenging the liability to be assessed as such. It is, however, seen that in its further observations at page 980 itself, the Full Bench has clearly laid down:

"In other words, where liability to be assessed to advance tax is challenged or to some extent is disputed or denied, an appeal to the Appellate Assistant Commissioner would lie, for, such contention, if it succeeds, must result in reduction of penal interest, but an assessee has no right of appeal merely against the quantum of penal interest charged."

4. In the above case, as stated earlier, the total income of the assessee was reduced by a sum of Rs. 48,000. It cannot, therefore, be denied that the liability to be assessed to tax including interest u/s 139(1) was to some extent disputed and, therefore, the appeal against the levy of interest u/s 139(1) was competent. Therefore, the question is answered in the affirmative and in favour of the assessee. The Department will pay the costs of the reference to the assessee.