(1999) 12 MAD CK 0020

In the Madras High Court

Case No : Writ Appeal No. 2460 of 1999 and C.M.P. No. 20707 of 1999 & Writ Appeal No. 2460 of 1999 and CMP No. 20707 of 1999

Commissioner of Income Tax — APPELLANT

Vs

E. Prahalatha Babu — RESPONDENT

Date of Decision : 23-12-1999

Acts Referred:
Constitution of India, 1950 — Article 226
Finance Act, 1997 — Section 66, 67

Citation : (2001) 249 ITR 309

Hon'ble Judges : K.G. Balakrishnan, C.J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

K. G. Balakrishnan, C. J.

1. The respondent in the writ petition, Commissioner of Income Tax, is the appellant. The respondent herein submitted a declaration under the

Voluntary Disclosure of Income Scheme, 1997. The said Scheme came into force on July 1, 1997, and the last date for submitting the declaration

was December 31, 1997. The declarant has to file the declaration without paying the tax payable u/s 66 of the Finance Act, 1997, and he may pay

the same within three months from the date of filing of the declaration with simple interest at the rate of two per cent, per mensem. The

respondent/petitioner failed to pay the tax, on the basis of the declaration filed by him, before the expiry of three months from the date of filing the

declaration. The respondent ought to have paid the tax on or before March 28, 1998, but he could pay the same only on March 31, 1998. The appellant, therefore, did not accept the application of the respondent under the Voluntary Disclosure of Income Scheme and as the respondent

was denied the benefit of the Scheme, he filed the writ petition. The learned single (see E. Prahalatha Babu, 18, 14th Street, Nandanam Extension,

Nandanam, Chennai- 35 Vs. The Commissioner of Income Tax Tamil Nadu IV, 121, Nungambakkam High Road, Chennai- 34,), held that even

though there was a delay of three days in making the payment of tax, the respondent is entitled to the benefit of the Voluntary Disclosure of Income

Scheme. Aggrieved by the same, the present appeal is filed.

2. We heard the appellant''s counsel. It was submitted by the appellant''s counsel that the Voluntary Disclosure of Income Scheme is a special

procedure and the payment of tax should be made in accordance with the scheme and if there is any violation of the procedure prescribed under

the Scheme by any person, such persons cannot be given the benefit of the scheme. It is true that the said proposition of law is correct. But, in the

instant case, the last date for submission of the application under the Voluntary Disclosure of Income Scheme was up to December 31, 1997, and

the respondent paid the tax on March 31, 1998. It is true that the declarant should have paid the tax within three months from the date of filing the

declaration. The respondent''s application was filed on December 29, 1997, and therefore, the tax ought to have been paid on March 28, 1998,

but the same was paid only on March 31, 1998. The respondent had applied for a bank loan since he had to pay Rs. 9.75 lakhs by way of tax as

the amount declared by him under the Scheme was Rs. 38.36 lakhs. The learned judge (see E. Prahalatha Babu, 18, 14th Street, Nandanam

Extension, Nandanam, Chennai- 35 Vs. The Commissioner of Income Tax Tamil Nadu IV, 121, Nungambakkam High Road, Chennai- 34,) has

exercised his discretionary power and we do not think that it was contrary to the express provision of law. An appeal against such an order could

be interfered with only if the power exercised is irrational or illegal. We do not think that this is a fit case for this court to interfere in appeal.

Therefore, the writ appeal is without any merit. The writ appeal is dismissed. Consequently, C. M. P. No. 20707 of 1999 is dismissed.