(2003) 03 MAD CK 0015

In the Madras High Court

Case No : T.C. No. 405 of 1999

Commissioner of Income Tax — APPELLANT

Vs

G.S.R. Krishnamurthy (HUF) — RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 273(2)

Citation : (2004) 265 ITR 260 : (2004) 136 TAXMAN 453

Hon'ble Judges : R. Jayasimha Babu, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Pushya Sitaraman, for the Appellant; P.P.S. Janardhana Raja, for the Respondent

Judgement

R. Jayasimha Babu J.

1. The assessment year is 1982-83. At the instance of the Revenue, the following question has been referred to us for our consideration :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law and had valid materials in cancelling the penalty

levied u/s 273(2)(b) of the Income Tax Act, 1961, in this case for the assessment year 1982-83 ?

2. The assessee is a Hindu undivided family. It filed its first Income Tax return on September 30, 1986, for the assessment year 1982-83, in which

year there was a search in the premises which subsequently resulted in the assessee admitting an additional income of Rs. 8,25,000. The assessee

had also sought protection under the amnesty scheme. The Tribunal had held that the assessee was eligible for such protection. The assessee was

subjected to penalty u/s 273(2)(b) of the Act by the Assessing Officer for not having furnished the estimate of the advance tax payable. Though the

Commissioner had upheld that penalty, the Tribunal set aside the same. The reasons given by the Tribunal for setting aside the order of the

Commissioner, in its own words, are :

During this period it is possible that the assessee was weighing the pros and cons of submitting evidence to explain the source of income, which

were contained in the sheet found during the course of search and reproduced in para. 12 above, or to buy peace by taking advantage under the

amnesty scheme. The assessee abandoned the idea of explaining the source of income for extra consideration but opted to seek the benefits under

the amnesty scheme. Under these circumstances we are inclined to hold that the assessee had reasons to file the return belatedly and for non-

payment of advance tax. We are also inclined to follow the finding of the Tribunal in its order dated May 1, 1987, regarding the amnesty scheme.

3. The levy of penalty u/s 273(2)(b) is a matter of discretion. The discretion available to the Assessing Officer was equally available to the

appellate authorities. The Tribunal having chosen to exercise the discretion in favour of the assessee for reasons with which we may not wholly

concur, we do not consider it appropriate to interfere with that exercise of discretion on the sole ground that had this court exercised that

discretion, it would have done so in a different manner. The Tribunal has adopted a very generous and liberal approach in this matter, but that by

itself would not suffice for us to hold that the decision taken by it is not in accordance with law. The reference is answered in favour of the

assessee.