(1995) 03 MAD CK 0055

In the Madras High Court

Case No : T.C. No. 214 of 1983 (Reference No. 67 of 1983) & TC No. 214 of 1983

Commissioner of Income Tax APPELLANT

Vs

K.S. Gopalakrishnan RESPONDENT

Date of Decision : 08-03-1995

Acts Referred:
Income Tax Act, 1961 — Section 139, 139(8), 143, 144, 2(40)

Citation : (1995) 216 ITR 443

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant;

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following two questions of law for our opinion u/s 256(1)

of the Income Tax Act, 1961 :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that no interest u/s 139(8) and section 215

of the Income Tax Act, 1961, could be levied in the assessee''s case in the assessment completed on September 27, 1979 ?

2. Whether the Appellate Tribunal''s view that the assessment made on September 27, 1979, consequent to the setting aside of the assessment

originally made u/s 144 of the Act by the Commissioner of Income Tax u/s 263 was not a regular assessment and, therefore, the Income Tax

Officer was not justified in charging interest u/s 139(8) and section 215 of the Income Tax Act, 1961, is sustainable in law ?

2. The assessee is an individual. In the assessment year 1973-74, the assessee had paid advance tax. The assessment was completed on the basis

of best judgment u/s 144 of the Income Tax Act on January 24, 1976. Then, the Commissioner of Income Tax, acting u/s 263 of the Act, set aside

the assessment and directed the Income Tax Officer to make a fresh assessment in accordance with law. The fresh assessment was completed on

September 27, 1979. This assessment was considered as a regular assessment by the Income Tax Officer, and accordingly, he levied interest u/s

139(8) and section 215. On appeal, the Commissioner of Income Tax (Appeals) held that the ex parte assessment earlier made is a regular

assessment and the fresh assessment made in pursuance of the order passed by the Commissioner u/s 263 of the Act is not a regular assessment

and, therefore, the Commissioner of Income Tax (Appeals) held that interest u/s 139(8) and section 215 cannot be levied. On appeal, the Tribunal

also accepted the view taken by the Commissioner of Income Tax (Appeals).

3. The point for consideration in this reference is whether the fresh assessment made by the Income Tax Officer in pursuance of the order passed

by the Commissioner of Income Tax u/s 263 of the Act is a regular assessment. A similar question came up for consideration before this court in

the case of RAYON TRADERS PRIVATE LTD. Vs. Income Tax OFFICER, COMPANIES CIRCLE I(2), MADRAS, AND ANOTHER., .

According to the facts arising in that case, on the basis of the assessment made on the petitioner on January 31, 1975, a demand of Rs. 12,803 as

balance of tax was made after adjustment of the tax deducted at source and the advance tax paid. The appeal against this order having been

allowed by the Appellate Assistant Commissioner on certain points, the Income Tax Officer passed a consequential order on January 21, 1976,

resulting in a refund of Rs. 52,121. As the Income Tax Officer did not grant interest on this refund amount u/s 214 of the Income Tax Act, 1961,

the assessee filed a revision petition to the Commissioner for grant of interest on the refund amount of Rs. 52,121 which was granted as a result of

the order of the officer giving effect to the Appellate Assistant Commissioner''s order. This claim having been rejected by the Commissioner on the

ground that u/s 214 interest was payable only up to the date of ""regular assessment"" which, is defined by section 2(40) as assessment made u/s

143 or section 144, the assessee filed this writ petition in the High Court. While disposing of this writ petition, this court held that the order passed

by the Income Tax Officer for giving effect to the Appellate Assistant Commissioner''s order is an order u/s 143, and, therefore, a ""regular

assessment"". The refund of Rs. 52,121 came to be made on January 21, 1976, when the officer gave effect to the Appellate Assistant

Commissioner''s order and hence the assessee will be eligible for interest u/s 214 up to that date.

4. A similar question again came up for consideration before the Calcutta High Court in the case of Calcutta Electric Supply Corporation Ltd. Vs.

Commissioner of Income Tax, , wherein while considering the meaning of the words ""regular assessment"", the Calcutta High Court held that ""the

fresh assessment made by the Income Tax Officer in pursuance of the order passed by the Commissioner of Income Tax u/s 263 of the Act is a

regular assessment and in the said assessment the Income Tax Officer is entitled to levy interest u/s 215 of the Act"".

5. Thus, inasmuch as the Commissioner of Income Tax set aside the order of assessment made by the Income Tax Officer u/s 144 of the Act since

the said order was erroneous and prejudicial to the interests of the Revenue, the entire assessment order passed u/s 144 dated January 24, 1976,

stands wiped out. Thereafter, the fresh assessment order passed by the Income Tax Officer in pursuance of the order passed by the Commissioner

of Income Tax u/s 263 of the Act alone would be the only assessment order which would be a regular assessment order. Therefore, interest u/s

139(8) and section 215 of the Act is exigible up to the date of assessment made on September 27, 1979. Accordingly, the view taken by the

Tribunal that the first assessment order made by the Income Tax Officer u/s 144 alone is a regular assessment order and the subsequent order of

assessment made by the Income Tax Officer in pursuance of the order passed by the Commissioner of Income Tax u/s 263 of the Act is not a

regular assessment, is not correct. In this view of the matter, we answer the questions referred to us in the negative and in favour of the

Department. No costs.