
(1979) 12 AP CK 0010

In the Andhra Pradesh High Court

Case No : Referred Case No. 66 of 1977

Commissioner of Income Tax

APPELLANT

Vs

M. Farahatullah

RESPONDENT

Date of Decision : 12-12-1979

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1985) 151 ITR 763

Hon'ble Judges : C. Kondaiah, C.J;A. Raghuvir, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; Y.V. Anjaneyulu, for the Respondent

Judgement

Kondatah, C.J.—This is a reference at the instance of the Commissioner of Income Tax by the Income Tax Appellate Tribunal, Hyderabad Bench, u/s 256(1) of the I.T. Act, 1961, on the following questions of law for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, there was any material or basis before the Appellate Tribunal to hold that the assessee was not guilty of contumacious conduct ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in cancelling the penalty levied u/s 271(1)(a)?

3. Whether, on the facts and in the circumstances of the case, the view taken by the Appellate Tribunal that no penalty is exigible is sound in law ?"

The respondent-assessee, an individual, has filed his return of income for the assessment year 1964-65, for the relevant accounting year ending with March 31, 1964, on March 27, 1968, instead of filing the same on or before September 30, 1964. The ITO holding that the assessee failed to file the return within the prescribed time-limit without reasonable cause has imposed a penalty of Rs. 4,940 u/s 271(1)(a) of the Act by his order dated March 18, 1971. The appeal

preferred by the assessee to the AAC was unsuccessful. The further appeal to the Income Tax Appellate Tribunal was allowed cancelling the penalty holding that the Revenue has not established that the assessee has failed to furnish the return within time without reasonable cause. The Tribunal was of the view that the onus is on the Revenue to establish that the assessee is guilty of contumacious conduct and that the assessee has failed to furnish the return in time. It relied upon the decisions of the Kerala High Court in *Dawn and Co. Vs. Commissioner of Income Tax*, and *Devassy v. CIT* [1912] 84 ITR 502 in support of this proposition of law. This legal position has not been accepted by a Full Bench of this court in *ADDL. COMMISSIONER OF Income Tax, A.P., AND ANOTHER Vs. DARGAPANDARINATH TULJAYYA and CO.*, wherein it was held that the assessee has to satisfactorily explain the delay for not filing the return within the period of limitation prescribed and that it is not for the Revenue to establish that the assessee has failed to furnish the return within time without reasonable cause. In this view, the Tribunal's legal reasoning in arriving at the conclusion that there was no justification for the levy of penalty u/s 271(1)(a) is illegal and erroneous in law.

2. Sri Y. V. Anjaneyulu, the learned counsel for the assessee, strenuously contends that though the Tribunal has committed a legal error in the aforesaid assumption of law, it had earlier in paragraph 5 of its order has stated that the Department has not challenged the correctness of the facts that are stated to have contributed to the delay as explained by the assessee and, therefore, according to the counsel for the assessee, it should be held that the Tribunal has accepted the explanation of the assessee. Sri P. Rama Rao, the learned counsel for the Revenue, contends that the Tribunal has not accepted the explanation of the assessee for the delay in filing the return and if it has so accepted, there was no necessity to consider the legal aspect and hold that the Revenue has not established that the assessee has failed to furnish the return within time without reasonable cause in the later portion of the same paragraph. According to the departmental counsel, from the entire paragraph 5, if read together, it would appear that the Tribunal has based its conclusion on the legal assumption that it was the Revenue that has to establish that the assessee has failed to furnish the return within time without reasonable cause and it has not come to any conclusion that it has accepted the explanation of the assessee.

3. The ITO as well as the AAC have rejected the explanation of the assessee for the delay in filing the return. The very case of the Department before Tribunal was that the assessee has not satisfactorily explained the delay in filing the return. If that was really not contested or was acceded to, there was no need for the Tribunal to mention this legal aspect and other particulars. In our view, the Tribunal has committed a grievous error in making the statement that the Department has not challenged the correctness of the facts stated by the assessee explaining the delay in filing the return. The Tribunal should have been more careful and diligent so that such statements and mistakes should not recur. We are in entire agreement with the submission of the learned standing counsel

for the Income Tax Department that if the Department had conceded that the delay has been satisfactorily explained, there was no need to go into the question and make a further order as that was the only point that was raised by the Department as can be seen from the written orders of the ITO and the AAC. That apart, the wrong approach relating to the burden of proof adopted by the Tribunal also might have contributed to the conclusion arrived at by the Tribunal in cancelling the penalty. We, therefore, hold that the reasoning of the Tribunal is illegal and consequently the order of the Tribunal must be held to be erroneous and contrary to the law enunciated by the aforesaid Full Bench of this court. However, we do not propose to express any opinion on the question whether the assessee has satisfactorily explained the delay in filing the return in the facts and circumstances of the case. For the aforesaid reasons, our answer to the questions is in the negative and in favour of the Department and against the assessee. The Income Tax Appellate Tribunal has to pass appropriate orders in the light of the aforesaid judgment after affording a reasonable opportunity to both the parties. There shall be no order as to costs.