(1971) 12 AP CK 0016

In the Andhra Pradesh High Court

Case No : Case Referred No. 81 of 1970

Commissioner of Income Tax APPELLANT

Vs

M. Manik Rao RESPONDENT

Date of Decision : 17-12-1971

Acts Referred:
Income Tax Act, 1961 — Section 139(1)

Citation : (1977) 109 ITR 580

Hon'ble Judges : Chinnappa Reddy, J;A.D.V. Reddy, J

Bench : Division Bench

Judgement

Chinnappa Reddy, J.—The assessee submitted his returns of income beyond the period prescribed by Section 139(1) of the Income-fax Act, 1961. The Income Tax Officer accepted the returns and proceeded with the assess-merit. He charged interest under the third clause of the proviso to Section 139(1) of the Act. He also levied penalty u/s 271(1)(a) of the Act on the ground that the assessee had failed without reasonable cause to furnish the returns of income which he was required to furnish u/s 139(1). Under the third clause of the proviso to Section 139(1) the Income Tax Officer is empowered, in his discretion, on an application by the assessee to extend the date for furnishing a return of income up to any period, in which case interest at 6% shall be payable by the assessee from the first day of October or the 1st day of January, as the case may be, of the assessment year to the date of the furnishing of the return. Since interest is chargeable under the third clause of the proviso only when the income tax Officer extends the time for the furnishing of the return on the application of the assessee, the Appellate Tribunal presumed that. there must have been an application by the assessee and that the income tax Officer must have extended the time for filing the return. The Tribunal thought that it was justified in drawing such a presumption as the correct state of facts was not clear from the records of the case which were avail able to them. We cannot say that the Tribunal erred in drawing such an inference. Illustration (c) to Section 114 of the Evidence Act authorises the drawing of a presumption that official acts have been regularly performed. Since interest was not chargeable unless time had been extended the Tribunal was justified in holding that time must have been extended on the application of the assessee. Accepting that finding we agree with the Tribunal that penalty was not leviable.

2. The questions referred to us are, therefore, answered in favour of the assessee and against the department. There will be no order as to costs.

