(1998) 10 MAD CK 0088

In the Madras High Court

Case No : Tax Case No''s. 1987 and 1988 of 1984 (Reference No''s. 1452 and 1453 of 1984)

Commissioner of Income Tax APPELLANT

Vs

N. Rama Devi RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 274, 274(2)

Citation : (2001) 248 ITR 654

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; R. Janakiraman, for the Respondent

Judgement

R. Jayasimha Babu, J.—The Tribunal has recorded a finding that there was concealment of income and that finding is not an issue before us. The Tribunal further proceeded to hold that the law applicable in the matter of levy of penalty is the law as on the date of return and not on the date of the initiation of the proceedings and, therefore, the penalty that was imposed by the Income Tax Officer is not correct, since he has acquired jurisdiction to impose penalty only on and after April 1, 1971, while concealment was found to be made in the returns filed on February 27, 1970, and October 27, 1970, for the assessment years 1969-70 and 1970-71, respectively. The amounts concealed were Rs. 19,552 and Rs. 16,645, respectively.

2. The Revenue, being aggrieved by the order of the Tribunal has caused the reference of the following two questions for our consideration :

"(1) Whether, on the facts and in the circumstances of the case, and having regard to the provisions of Section 274(2) as amended by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, the Appellate Tribunal was right in holding that the Income Tax Officer had no jurisdiction to levy penalty u/s 271(1)(c) in the assessee''s case for 1969-70 and 1970-71 ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the law applicable to the penalty proceedings for the purpose of jurisdiction of the authority to levy u/s 271(1)(c) ?"

3. The first question has to be answered in favour of the Revenue in the light of the decision in Varkey Chacko Vs. Commissioner of Income Tax, , wherein it was held by the Supreme Court that the penalty for concealment of income or for furnishing inaccurate particulars of income can be imposed only when the assessing authority is satisfied that there has been such concealment or furnishing of incorrect particulars. The proceedings for the imposition of penalty can, therefore, be initiated only after an assessment order has been made which finds such concealment or furnishing of in-accurate particulars and it is only at that point of time that the authority who has the power to impose the penalty, needs to be identified.

4. In this case, the assessment, admittedly, was made long after April 1, 1971. It is the date-of the assessment, which is the relevant date for identifying the officer, competent to initiate penalty proceedings. The income concealed was, in this case, less than Rs. 25,000 for each of the assessment year. As the assessment was made after the amendment to Section 274(2) of the Act, the penalty was leviable by the Income Tax Officer. The first question referred to us is, therefore, required to be answered in favour of the Revenue and against the assessee.

5. As regards the second question, the answer is neither the date of filing the return, nor the initiation of penalty proceedings, which is relevant, but it is the date of the assessment order, which is relevant for identifying the authority competent to initiate penalty proceedings. The parties to bear the respective costs.