(1994) 01 MAD CK 0041

In the Madras High Court

Case No : Tax Cases No''s. 947 and 948 of 1981 (References No''s. 443 and 444 of 1981)

Commissioner of Income Tax	APPELLANT
Vs	
P.S. Mohideen Abdul Khader	RESPONDENT

Date of Decision : 17-01-1994

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

Citation : (1994) 210 ITR 735

Hon'ble Judges : Venkataswami, J;Rangarajan, J

Bench : Division Bench

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

Judgement

Rangarajan, J.—In this reference, the following two questions have been referred by the Appellate Tribunal :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding and had valid materials to hold that the

assessee was prevented by reasonable cause from furnishing the return of income in time and, therefore, there was no need to levy penalty u/s

271(1)(a) and the penalty of Rs. 66,120 levied deserved to be cancelled ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding and had valid materials to hold that

there was no cause for levying penalty u/s 273(c) of the Act and the penalty of Rs. 20,666 should therefore be cancelled ?

2. The facts leading to this reference are that the assessee, an individual, was having his own business in rice on a small scale in Kavundampalayam

while his brother-in-law was doing business in rice and wheat products using the licence in the name of the assessee. Since the assessee did not file the return of income within the time prescribed and also did not file an estimate of income as required u/s 212(3A) of the Income Tax Act, the

Income Tax Officer imposed penalties u/s 271(1)(a) and u/s 273(c). The assessee contended that since he was an illiterate and had entrusted the

matter to his brother-in-law who was actually carrying on the business, he was under the belief that he was under no legal obligation to file the

return or the estimate. No doubt, this explanation was given only before the Appellate Assistant Commissioner. But the Appellate Tribunal also

found that this explanation was supported by the fact that the assessment itself was made only by adding the income found in the books of the

assessee''s brother-in-law, and, both the Appellate Assistant Commissioner and the Appellate Tribunal came to the conclusion that the assessee''s

belief that since his brother-in-law was actually carrying on the business, he was under no legal obligation to file the return or the estimate,

constituted reasonable cause, inasmuch as the assessee had an honest belief that he had no income which was liable to be returned. Even if this

belief was erroneous, it constitutes reasonable cause for the delay in filing the return and failure to file the required estimate. The finding of the

Tribunal that the default was not without reasonable cause is, therefore, a correct finding on the facts on record, and has to be upheld. The

questions referred are answered in the affirmative and against the Revenue. No costs.