

(2002) 11 MAD CK 0087

In the Madras High Court

Case No : Tax Case No's. 343 to 345 of 1999

Commissioner of Income Tax

APPELLANT

Vs

R. Sridhar

RESPONDENT

Date of Decision : 26-11-2002

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (2003) 182 CTR 68 : (2003) 263 ITR 586

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant; C.V. Rajan, for the Respondent

Judgement

N.V. Balasubramanian, J.—In pursuance of the directions of this Court, the Tribunal has stated the case and referred the following question of law for consideration u/s 256(1) of the IT Act, 1961 (hereinafter to as "the Act").

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty order passed u/s 271(1)(a) in the case of the partners for the reasons that partnership had already been penalised on this account ?"

2. The assessment years involved are 1984-85 to 1986-87. The assessee is a partner in two firms viz., M/s S.S. Builders and M/s K.C. Builders and the penalty proceedings u/s 271(1)(a) of the Act were initiated against both the firms due to the delayed filing of its returns of income and the penalties were also imposed on the two firms for the asst. yrs. 1984-85 to 1986-87. The assessee as a partner in the firm also delayed in filing his returns of the income for the assessment years in question and the AO imposed on the assessee penalties of varying amounts for the asst. yrs. 1984-85 and 1985-86 for the delayed filing of returns u/s 271(1) (a) of the Act, which was confirmed by the CIT(A). The Tribunal, however, took a different view and held that since the firms in which the assessee along with other partners were penalised for late filing of the return, the assessee or any

other partner again cannot be penalised u/s 271(1)(a) of the Act for late filing of their individual returns as it would amount to penalising the assessee again for the same offence viz., late filing of the return and allowed the appeal. The Revenue has challenged the order of the Tribunal and hence the tax case.

3. We heard Mr. Ravikumar, learned counsel appearing for the, Revenue, and Mr. C.V. Rajan, learned counsel appearing for the assessee.

4. Mr. C.V. Rajan, learned counsel for the assessee in his fairness brought to the attention of this Court the decision of the Allahabad High Court in ADDITIONAL COMMISSIONER OF Income Tax, LUCKNOW Vs. SMT. TRIVENI DEVI., and the decision of the Punjab and Haryana High Court in Commissioner of Income Tax Vs. Pratap Chand Maheshwari, , where both the Courts have taken a view that the penalty cannot be levied once in the hands of the firm and again in the hands of a partner. It is relevant to mention here that the decision of the Allahabad High Court dealt with the case of penalty for concealment of income and the Punjab and Haryana High Court dealt with the case of penalty for the failure to file the estimate of the advance tax. However, both the decisions have been considered by the Delhi High Court in a detailed manner in Madan Lamba Vs. Commissioner of Income Tax, New Delhi, and S. Ranganathan, J. (as His Lordship then was) speaking for the Bench has considered various possibilities in the matter of levy of penalty on the partner and ultimately laid down the law as under :

"It seems to us that a conclusion has to be reached in each case on a consideration of all the circumstances including the two grounds indicated above and that it would be unsafe and incorrect to enunciate any principle of general application to all situations. Confining ourselves for the time being to Section 271(1)(a) we think that the imposability of penalty on a partner should depend upon a consideration of the following circumstances ; (a) whether he is a partner of a registered firm or unregistered firm; (b) whether he has income other than the share income or not, and if so, the nature and extent of such income; (c) whether he is one of several partners to whom any contumacious conduct on the part of the firm could not be attributed or whether he is for all practical purposes the brain behind the firm or able to control its affairs, and so, responsible for its delays and defaults; (d) whether any penalty has been or can be imposed on the firm and if so, the extent and nature thereof; and (e) whether the partner has any independent reason for the delay in the filing of the return apart from that urged in the case of the firm."

5. However, in our view, it is not necessary to go into the larger question, as we find from the orders of assessment for all the three assessment years in question, the assessee had only share income from the two firms and so far as the capital gain that was assessed in the hands of the assessee is concerned, that is also the share of the capital gain from the firm. In other words, the assessee had no other independent income apart from the share income from the firm. Therefore, we hold that since he had no income other than the share

income from the firm, the levy of penalty on the assessee is not justified as without relevant particulars of the share income from the firm, the assessee would not have been in a position to file the return. Further, there is no finding that the assessee was responsible for the delayed finalisation of the accounts of the firm nor is there finding that he was responsible for the delay in filing the return of the firm, In these circumstances, we hold that the ultimate conclusion of the Tribunal is sustainable though we are not expressing any opinion on the reasonings arrived at by the Tribunal. Since we are not going into the larger question, we reframe the question as under:

"Whether, on the facts and circumstances of the case, the Tribunal is justified in cancelling the penalty u/s 271(1)(a) of the IT Act on the assessee ?"

We answer the question as reframed by us in the affirmative in favour of the assessee and against the Revenue.

No costs.