(1998) 09 MAD CK 0054

In the Madras High Court

Case No : T.C. No. 1253 of 1987 (Reference No. 762 of 1987)

Commissioner of Income Tax APPELLANT

Vs

S. Antony RESPONDENT

Date of Decision : 14-09-1998

Acts Referred:
Income Tax Act, 1961 — Section 139, 139(8), 143(3), 147, 148

Citation : (1998) 150 CTR 421 : (2000) 242 ITR 363

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

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred to us at the instance of the Revenue is as to whether on the facts and in the circumstances of

the case, the Appellate Tribunal was correct in law in holding that the interest under Sections 139(8) and 217 was not leviable in respect of an

assessment made u/s 147. The assessment year is 1976-77.

2. The assessee is an individual carrying on real estate business. As he did not file any return for the assessment year 1976-77, the Income Tax

Officer issued a notice to him u/s 148, in response to which a return was filed admitting an income of Rs. 28,410. The assessment was completed

u/s 143(3) read with Section 147(a) of the Income Tax Act and in the assessment order interest was also charged under Sections 139(8) and 217

for delay in filing the return and also for non-payment of advance tax in accordance with law.

3. On appeal preferred by the assessee the interest so levied was ordered to be deleted by the Commissioner who relied on a decision of the

Karna-taka High Court reported in Charles D''souza Vs. Commissioner of Income Tax, Karnataka-II, . The Tribunal affirmed the view of the

Appellate Assistant Commissioner and therefore this reference.

4. This court in the case of K. Gopalaswami Mudaliar Vs. Fifth Additional Income Tax Officer, Coimbatore, and Others., while dealing with

Section 34 of the 1922 Act which corresponds to Section 147 of the 1961 Act held that where the assessee fails to submit any return of income

during the relevant assessment year and an assessment is for the first time made on him u/s 34(1)(a) of the 1922 Act read with Section 23, interest

u/s 18A(6) will be charged for failure on the assessee''s part to pay advance tax in accordance with Section 18A(3).

5. The law laid down by this court in that decision is applicable to the facts of this case as well although that decision was rendered under the 1922

Act the principle laid down there, namely, that the assessment made for the first time though not on the basis of a return voluntarily filed in the

manner required by the statutory provision and within the time prescribed therein is a regular assessment when made the first time, is applicable to

an assessment made under the 1961 Act as well, there is no express prohibition in the Act for treating such an assessment as a regular assessment.

The word ""assessment"" as defined in the Act includes reassessment. In this case no reassessment had been done. The Income Tax Officer had

issued a notice calling for a return and thereafter the return had been filed. The assessment so made for the first time was in fact a regular

assessment and the applicability of Sections 139 and 217 of the Act are not excluded in respect of such an assessment.

6. Though the Karnataka High Court in the case of Charles D''souza Vs. Commissioner of Income Tax, Karnataka-II, , has taken a different view

and that view has been followed by the Tribunal, having regard to the principle enunciated by this court in the case of K. Gopalaswami Mudaliar

Vs. Fifth Additional Income Tax Officer, Coimbatore, and Others., , with which we are in respectful agreement we must hold that the Tribunal was

in error in holding that the assessment made in this case for the first time was not a regular assessment and that interest was not leviable. We may

also add one more reason for reaching such a conclusion. It could not have been the policy of the Act to treat persons who neglected their obligation to file the return within the time in a more favourable way than those who by complying with law have filed their returns voluntarily,

whether within the time allowed by law or belatedly. The assessee in this case had neglected to file the return and the return was filed only after the

notice was issued. In the return filed the assessee admitted the assessable income and tax was levied thereon. The assessee though having a taxable

income, had failed to pay the advance tax and had also committed delay in filing the return. The interest charged for such failure was in accordance

with the policy as also the provisions of the Act.

7. The levy of interest on such assessment made for the first time u/s 147 has been held by the High Courts of Delhi, Bombay and Kerala to be

valid, as in the view taken by those High Courts also such an assessment is a regular assessment. The decision of the Delhi High Court is to be

found in the case of National Agricultural Co-operative Marketing Federation of India Ltd. Vs. Union of India and others, and Commissioner of

Income Tax Vs. Pratap Singh, . The decision of the Bombay High Court is in the case of Deviprasad Kejriwal Vs. Commissioner of Income Tax

(Central), Bombay, and that of the Full Bench of the Kerala High Court is in the case of Lally Jacob Vs. Income Tax Officer and Others, .

8. We therefore answer the question referred to us in favour of the Revenue and against the assessee.