

(1975) 12 MAD CK 0018

In the Madras High Court

Case No : Tax Case No. 263 of 1970 (Reference No. 51 of 1970)

Commissioner of Income Tax

APPELLANT

Vs

V.G. Panneerdas and Co.

RESPONDENT

Date of Decision : 17-12-1975

Acts Referred:

Income Tax Act, 1922 — Section 23(3)

Income Tax Act, 1961 — Section 271(1), 271(2), 297(2)

Citation : (1978) 112 ITR 225

Hon'ble Judges : V. Sethuraman, J; V. Ramaswami, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; T.S. Ramu, for the Respondent

Judgement

Ramaswami J.

1. The following four questions are referred u/s 256 of the Income Tax Act:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the penalty of Rs. 12,200

levied u/s 271(1)(c) of the Income Tax Act, 1961, for the assessment year 1961-62 is illegal?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the penalty of Rs. 6,404 levied

u/s 271(1)(c) for the assessment year 1959-60 is illegal ?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the penalty of Rs. 8,700 levied

u/s 271(1)(c) for the assessment year 1960-61 is illegal ?

4. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the penalty of Rs. 6,300 levied

u/s 271(1)(c) for the assessment year 1961-62 is illegal?

2. One of the assessee is a firm of partnership and the other is a partner in the partnership. The assessment years in question in respect of the firm

is 1961-62 and that for the individual partner are 1959-60, 1960-61 and 1961-62. The firm submitted a return in respect of the assessment year

1961-62 on August 20, 1961, and the individual partner submitted his return on April 9, 1960, November 10, 1960, and August 30, 1961, for the

assessment years 1959-60, 1960-61 and 1961-62, respectively. The assessments u/s 23(3) of the Indian Income Tax Act, 1922, were made on

February 29, 1964. Thereafter, penalty proceedings were initiated and notice u/s 274(2) of the Income Tax Act, 1961, was issued in respect of all

the assessment years on May 26, 1965, and orders imposing penalty were issued by the Inspecting Assistant Commissioner on February 25,

1966. The assessee preferred appeals to the Tribunal. Before the Tribunal they conceded that they had concealed the particulars of their income

and furnished inaccurate particulars and that the penalties were otherwise exigible but it was contended that only the provisions of the 1922 Act

were applicable and not Section 271(1)(c) of the Income Tax Act, 1961. The Tribunal accepted their contention and held that penalties could

have been levied only under the 1922 Act and that the penalty orders made u/s 271(1)(c) were, therefore, liable to be quashed. The Tribunal also

held that the penalties levied were not excessive. Subsequent to the decision of the Tribunal, the Supreme Court in Jain Bros. and Others Vs. The

Union of India (UOI) and Others, has held that even in respect of concealment prior to the assessment year 1962-63, the provisions of Section

271(1)(c) were applicable. In the words of the Supreme Court--See [1970] 77 ITR 107, 117:

We are further unable to agree that the language of Section 271 does not warrant the taking of proceedings under that section when a default has

been committed by failure to comply with a notice issued u/s 22(2) of the Act of 1922. It is true that Clause (a) of Sub-section (1) of Section 271

mentions the corresponding provisions of the Act of 1961, but that will not make the part relating to payment of penalty inapplicable once it is held

that Section 297(2)(g) governs the case. Both Sections 271(1) and 297(2)(g) have to be read together and in harmony and so read the only

conclusion possible is that for the imposition of a penalty in respect of any assessment for the year ending on March 31, 1962, or any earlier year

which is completed after the first day of April, 1962, the proceedings have to be initiated and the penalty imposed in accordance with the

provisions of Section 271 of the Act of 1961. Thus the assessee would be liable to a penalty as provided by Section 271(1) for the default

mentioned in Section 28(1) of the Act of 1922 if his case falls within the terms of Section 297(2)(g)-

3. This decision directly answers all the questions referred to us in favour of the revenue.

4. But the learned counsel for the assessee contended, relying on our judgment in Commissioner of Gift-tax Vs. C. Muthukumaraswamy

Mudaliar, , that in these cases the returns were submitted prior to the coming into force of the Act and that, therefore, the law that was applicable

on the date of filing of the return alone could be applied and not the provisions contained in the Income Tax Act, 1961. That decision related to an

amendment of a particular provision and the applicability of that provision to an individual case when it was not in terms made retrospective. But

the provision in Section 297(2)(g) specifically mentions that the applicability of the penal provision is to be with reference to the date of assessment

and not with reference to the date of filing of the returns. Therefore, the general principle decided in Commissioner of Gift-tax Vs. C.

Muthukumaraswamy Mudaliar, is not applicable and the decision of the Supreme Court is the direct authority against the contention of the

assessee. We accordingly answer all the questions in the negative and in favour of the revenue. Revenue will be entitled to its costs. Counsel's fee

Rs. 250.