(1992) 03 MAD CK 0021

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 14422 of 1989

Dasari Narayana Rao APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 04-03-1992

Acts Referred:
Income Tax Act, 1961 — Section 139, 139(8), 276CC

Citation : (1993) 199 ITR 325

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : K.A. Panchapagesan, for the Appellant; Ramaswamy, K., Special Public Prosecutor, for the Respondent

Judgement

Arunachalam, J.—The petitioner, Dasari Narayana Rao, is the sole accused in CC. No. 154 of 1989, pending on the file of the Additional

Chief Metropolitan Magistrate (E. O. I.), Madras. He is being prosecuted on a private complaint filed before the trial magistrate by the respondent

who is the Income Tax Officer, Film Ward-I, Madras-6, alleging commission of an offence u/s 276CC of the Income Tax Act, 1961, for wilful

failure to file the return of income within due time for the assessment year 1985-86.

2. In this petition preferred u/s 482, Criminal Procedure Code, 1973, to call for the records and quash the pending prosecution as not maintainable

and an abuse of the process of the court, Mr. K. A. Panchapagesan contended, that by charging interest u/s 139(8) of the Income Tax Act, the

Income Tax Officer shall be deemed to have impliedly extended the time for filing the return, and hence the question of wilful default in filing the

return of income cannot arise. This very question was considered by me in extenso in Criminal Misc. P. No. 13890 of 1989, and by my order

dated February 17, 1992 K. Jagadeesan Vs. Income Tax Officer,), I held that, after the amendment of section 139 of the Income Tax Act Officer

cannot be deemed to be implied extension of time to file the return which would in effect exclude wilful default and a consequent prosecution. ""No

was the answer to the question posed, I have further held in the aforestated petition that the default being wilful or otherwise was a pure question of

fact and more so when prima facie averments were made available in the complaint regarding such default. Mr. Panchapagesan as well as Mr.

Ramaswamy, K., agreed that the law laid down by me in Criminal M. P. No. 13890 of 1989 K. Jagadeesan Vs. Income Tax Officer,), will

squarely govern the ground taken in this petition as well. On the same parity of reasoning, this petition also shall stand dismissed.