
(1970) 03 MAD CK 0040
In the Madras High Court
Case No : Writ Petition No. 992 of 1966

First Gift-tax Officer

APPELLANT

Vs

A.A. Annamalai Nadar

RESPONDENT

Date of Decision : 23-03-1970

Acts Referred:

Gift Tax Act, 1958 — Section 23(5)

Citation : (1970) 77 ITR 608

Hon'ble Judges : Ramaprasada Rao, J; Ramanujam, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam, for the Appellant; K. Narayanaswami, for the Respondent

Judgement

Ramaprasada Rao, J.—This is a writ petition in which the department is seeking for the issuance of a writ of certiorari against the Income Tax Appellate Tribunal which by its order dated January 17, 1966, granted a stay of the collection of the gift-tax payable by the first respondent pursuant to the orders of the assessing authority, pending disposal of the appeal. The main point raised before us is that the Income Tax Appellate Tribunal had no jurisdiction to grant such stay pending disposal of the appeal, as no such power is expressly envisaged in Section 23(5) of the Gift-tax Act of 1958. The contention of the respondent, however, is that such power is implied.

2. We heard the counsel. The Supreme Court had occasion to consider the scope and content of such a power of the appellate authority u/s 254(1) of the Income Tax Act of 1961. The Supreme Court in *Income Tax Officer v. M. K. Mohammed Kunhi* was of the view that the Section should be interpreted liberally and that it did confer on the Appellate Tribunal powers of the widest amplitude in dealing with appeals before it. They evolved a formula that by necessary implication the Tribunal had the power of granting stay as well during the pendency of the appeal before it. It is not in dispute that the text of Section 23(5) of the Gift-tax Act, 1958, is in pari materia with that of Section 254(1) of the Income Tax Act.

Having regard to the ratio in *Income Tax Officer Vs. M.K. Mohammed Kunhi*, , we are of the view that the Income Tax Appellate Tribunal, exercising jurisdiction under the Gift-tax Act, 1958, also possesses such wide powers and, notwithstanding the text of Section 23(5), it has, by necessary implication, the power to grant stay of the collection of the tax demanded under the principal Act, during the pendency of the appeal before it. No question of wrongful exercise of jurisdiction, therefore, arises. There is no other error apparent on the face of the record. The rule nisi is discharged. The writ petition is dismissed. There will be no order as to costs.