(1994) 07 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No''s. 1353 and 1354 of 1993

R. Raghavan APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 20-07-1994

Acts Referred:
Income Tax Act, 1961 — Section 234A, 234B, 234C

Citation : (1994) 77 TAXMAN 448

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Latha Sakthivelu, for the Appellant; N.V. Balasubramanian, for the Respondent

Judgement

Raju, J.—These two writ petitions are dealt with together since they relate to one and the same subject-matter though praying for different

reliefs. In W.P. No. 1353 of 1993, the petitioner prays for a writ of certiorarified mandamus to call for the records of the petitioner in PA/GI.PT

9933/SIC II on the file of the first respondent and quash the order dated 23-11-1992 relating to levy of interest under sections 234A to 234C of

the income tax Act, 1961 (''the Act'') and, consequently, direct the first respondent not to charge any interest under sections 234A, 234B and

234C.

2. In W.P. No. 1354 of 1993, the petitioner prays for a writ of declaration declaring that the provisions of sections 234A, 234B and 234C

introduced by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1-4-1989 are illegal, unconstitutional, ultra vires and unenforceable

so far as the petitioner is concerned.

3. In similar circumstances identical writ petitions filed came up for consideration

of this Court and, in and by my order dated 13-12-1993, in W.P.

Nos. 2528 to 2539, etc., of 1993, I have issued certain directions to enable the petitioners similarly placed to approach the competent authorities

for the claim towards interest. While doing so, I have issued directions as hereunder:

So far as writ petitions filed against the order of the assessing authorities applying the provisions of the Act and levying interest are concerned, it is

stated by the learned counsel for the petitioners that in one of such cases, on appeal, relief has been obtained by the assessee, though the

department has pursued the matter in that case on further appeal. Be that as it may, either in such case or in the other cases filed directly against the

income tax Officer, the petitioners concerned shall have liberty to move the concerned income tax Officer /assessing authority or/and Central

Board of Direct Taxes for appropriate relief and orders, depending upon the grievance and relief that is sought for. As and when the petitioners in

those writ petitions move the Central Board, the said authority shall consider the claims so made in the light of the directions issued in the other

batch of cases referred to above. The assessing authority concerned also shall be at liberty as and when moved by the respective petitioners to

consider the claim, if any, that may be made as are permissible in law for such authority to consider and pass appropriate orders in this regard.

So far as W.P. Nos. 2529, 7431, 7433, 7735, 7737, 11240, 18548 & 18995 of 1993 challenging the constitutional validity of section 234A to C

of the Act are concerned, the learned counsel, in the light of the orders passed as above, has made an endorsement on the case bundle that the

petitioners are not pursuing the challenge for the time being in these proceedings and that liberty may be given to withdraw such writ petitions.

Accepting the request made, the writ petitions filed for writs of declaration challenging the constitutional validity of the provisions of the Act

referred to above shall stand hereby dismissed as withdrawn and not pressed. This Court makes it very clear that the dismissal of such writ

petitions shall not be construed as an expression of any opinion on the validity of the provisions themselves.

4. The learned counsels appearing on either side agree that the writ petitions now under consideration may also be disposed of on the same lines as

the other batch of writ petitions referred to supra. Consequently, applying the ratio of the said decision, W.P. No. 1354 of 1993 for a writ of

declaration challenging the constitutional validity of the provisions of the Act shall stand dismissed as withdrawn and not pressed in view of the

endorsement made in this case also, making it clear that the dismissal of the said writ petition shall not be construed as an expression of any opinion

on the validity of the provisions themselves. So far as W.P. No. 1353 of 1993 is concerned, the petitioner shall have liberty to move the concerned

ITO/assessing authority or/and CBDT for appropriate relief and orders depending upon the nature of grievance and the relief that is sought for. As

and when the petitioner in the above writ petition moves the CBDT or the authorities concerned, such authority shall consider the claim so made by

the petitioner in the light of the directions issued in W.P. Nos. 2528 to 2539, etc., of 1993 dated 13-12-1993, of course, after giving notice and

opportunity to the petitioner or his representative to represent his case and pass appropriate orders in accordance with law. This writ petition is

finally disposed of on the above terms. No costs.

