
(1998) 09 MAD CK 0031
In the Madras High Court
Case No : Writ Petition No. 8813 of 1991

R. Seshammal

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 10-09-1998

Acts Referred:

Income Tax Act, 1961 — Section 119, 148, 237

Citation : (1999) 157 CTR 140 : (1999) 237 ITR 185 : (1998) 101 TAXMAN 652

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : R. Janakiraman, for the Appellant; Chitra Venkataraman, for the Respondent

Judgement

R. Jayasimha Babu, J.—The only defence put forward by the respondents in this writ petition for the refusal to refund the amount paid by

the petitioner under the mistaken notion that tax was payable even though it was not required to be paid, is that the refund is permissible only when

the person who paid the amount is found to be one who was required to pay the tax, and that the amount, refund of which is claimed is in excess of

what he was required to be paid as tax.

2. It is not in dispute that even though proceedings were initiated u/s 148 of the Act, those proceedings were dropped by the Income Tax Officer

on the ground that there was no chargeable income, on which tax could be levied. When he passed that order, he had before him the return which

had been filed by the petitioner, wherein the income for the relevant assessment year was shown as "nil" and the details of the amounts paid as

advance tax were also set out. The petitioner had paid Rs. 3,324 on September 6, 1982, a similar sum of Rs. 3,324, on December 13, 1982, and

yet another sum of Rs. 37,160 on March 2, 1983, in all totalling Rs. 43,808. The Income Tax Officer did not find any inaccuracy in the return

submitted by the assessee. The petitioner received an intimation from the Income Tax Officer dated July 17, 1990, refusing to refund the amount to

her on the ground that the return of income had not been filed voluntarily before the Income Tax Officer in time as per Section 139(1) of the Act

and that the refund had also not been applied for by the assessee in time u/s 237 of the Act

3. The fact that the petitioner had paid the monies to the Government under the mistaken notion that the association of persons would be liable for

tax even when the assessment was not required to be made as an association of persons; that the amount though paid was not actually required to

be paid and that the State has not refunded those amounts by taking advantage of the mistake committed by the payer is not in dispute. The Act is

not intended to benefit the State by enabling it to collect or retain monies not payable to it under the Act. What is required to be collected from the

assesseees under the Act is only the tax and other amounts properly payable under the Act.

4. The argument advanced by counsel for the Revenue that Section 237 of the Act does not permit such refund being made is not supported by the

terms of that section. Section 237 of the Act provides that if monies have been paid in excess of the amount for which the payer is "properly

chargeable under the Act for that assessment year" such person is entitled to get the refund of the excess amount. The entire amount paid by the

assessee was in excess of the amount which was actually chargeable. The assessee was, therefore, entitled to have refund of the excess amount.

5. Section 237 of the Act does not specify that an assessment order must be made and that some amount must be found to be payable as tax and

that some amount in excess of that amount should have been paid. It is not a pre-condition for invoking that section that some liability for tax must

have been cast upon the person claiming refund.

6. According to the Department there had been some delay in claiming the refund by the assessee. The amounts had been paid in the year 1982-

83. The proceedings u/s 148 of the Act were dropped on July 17, 1990. The petitioner who is a widow had applied to the Board on August 11,

1990, u/s 119(2)(b) of the Act. By the impugned letter of April 4, 1991, the Income Tax Officer conveyed to the petitioner the Central Board of

Direct Taxes's decision to reject the petitioner's request without setting out any reasons,

7. This is hardly the manner in which the State is expected to deal with the citizens, who in their anxiety to comply with all the requirements of the

Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and, thereafter, seek refund of

the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. The State is not entitled to plead the

hypertechnical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render

justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund.

8. The respondents are directed to refund the sum of Rs. 43,808 to the petitioner together with interest at the rate of twelve per cent, per annum

from the date of payment of the monies by the petitioner till the date of refund.

9. Writ petition is allowed, with costs in the sum of Rs. 1,500.