Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 11/09/2026

**(2011) 06 MAD CK 0024**

**In the Madras High Court**

**Case No :** Tax Case (Appeal) No''s. 178 to 180 of 2005 and TCMP No''s. 138 to 140 of 2005

Senthamarai Constructions — APPELLANT

Vs

The Commissioner of Income Tax — RESPONDENT

**Date of Decision :** 20-06-2011

**Acts Referred:**
Income Tax Act, 1961 — Section 217(1), 271, 271(1)

**Citation :** (2011) 06 MAD CK 0024

**Hon'ble Judges :** P.P.S. Janarthana Raja, J;Chitra Venkataraman, J

**Bench :** Division Bench

**Advocate :** P. Vedavallee, for the Appellant; J. Naresh Kumar, for the Respondent

**Final Decision :** Dismissed

## Judgement

Chitra Venkataraman, J.—These three Tax Case Appeals are filed by the Assessee as against the order of the Tribunal relating to the

assessment years 1990-91, 1991-92 and 1992-93 raising the following questions of law:

1. Whether in the facts and circumstances of the case the Tribunal was right in holding that the revised return filed by the asessee to purchase

peace and avoid litigation would amount to concealment in the instant case attracting penalty u/s 217(1)(c) of the Income Tax?

2.(a) Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the revised return filed by the Assessee

would constitute a valid, legal and proper basis for levy of penalty u/s 271(1)(c) of the Act, particularly since the assessment was based only on the

said return and not on any evidence or material on record, justifying the assessment of the income, in respect of which the penalty was levied.

(b) Whether on the facts and in the circumstances of the case the Tribunal was right in its view that a mere admission by the Assessee establishes

concealment, Authority regarding the discharge of the burden of proof in respect of the explanation to Section 271 or any specific finding in this

regard in the order of penalty?

(c) Whether on the facts and in the circumstances of the case, the Tribunal is right in confirming the levy of penalty u/s 271(1)(c) of the Act?

2. It is seen from the facts projected herein that the Assessee is a registered firm consisting of three partners. In respect of the assessment year

1990-91, the Assessee filed its return originally admitting a total income of Rs. 1,45,830/-; for the assessment year 1991-92 - Rs. 1,56,189/- and

for the assessment year 1992-93, the Assessee did not file any return. There was a search in the premises of one R. Sonai, who happens to be the

Managing Partner of the Assessee company, on 27.3.1992. The search resulted in the seizure of bank deposits and jewellery. The Managing

Partner R. Sonai admitted that the unexplained investments were out of the undisclosed income of the firm. Following this, a revised return was

filed in respect of the first two assessment years and for the third year, the firm filed a return admitting the total income. The Assessee offered the

income, which was stated to be undisclosed income of the firm to be distributed among the above said three assessment years. After completing

the assessment, proceedings were initiated to levy penalty u/s 271(1)(c) of the Income Tax Act. The Assessee stated that it offered to agree the

income only to purchase peace from the Department. As such, there was no wilful concealment at all warranting levy of penalty u/s 271(1)(c) of

the Income Tax Act. Taking the view that the Assessee had admitted the income as undisclosed and it was made use to make undisclosed

investments by the Managing Partner, the Assessing Authority levied minimum penalty of Rs. 60,000/- for the assessment year 1990-91 as against

the maximum penalty leviable at Rs. 1,52,500/-; Rs. 1,00,000/- for the assessment year 1991-92 as against the maximum penalty of Rs.

2,70,000/- and for the last assessment year 1992-93 - Rs. 1,75,000/- as against the maximum penalty of Rs. 4,74,708/-.

3. The Assessee preferred appeals before the Commissioner of Income Tax (Appeals), who agreed with the view of the Assessee and by

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/senthamarai-constructions-appellant… 

following the decision of the Supreme Court in the case of Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income

Tax, Delhi, held that when the Assessee had offered the income voluntarily, penalty could not be levied on the Assessee. Thus, in respect of all the

three assessment years, the Commissioner of Income Tax (Appeals) cancelled the levy of penalty. As against this order, the Revenue went on

appeal before the Income Tax Appellate Tribunal.

4. It is seen from the order of the Tribunal that by a common order, it considered the claim of the Assessee that there was no wilfulness as regards

the offering of an additional income at the hands of the Assessee; that the same was offered only to purchase peace and hence, in the

circumstances, the Assessee contended that the question of levy of penalty did not arise. The Tribunal, however, rejected the claim of the Assessee

by following the decision of this Court reported in P. Govindaswamy Vs. Commissioner of Income Tax, where under similar circumstances

following the decision of the Supreme Court in the case of Commissioner of Income Tax Vs. Suresh Chandra Mittal, , this Court confirmed the

levy of penalty. The Tribunal held that in view of the introduction of Explanation to Section 271(1)(c) of the Income Tax Act, the reliance placed

by the Assessee as regards the decision reported in Commissioner of Income Tax Vs. Suresh Chandra Mittal, is no longer sustainable in law.

5. The Tribunal pointed out that after the decision of the Supreme Court in the case of Commissioner of Income Tax Vs. Suresh Chandra Mittal,

and with the introduction of Explanation to Section 271(1)(c) of the Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of

Income Tax, Delhi, has no relevance to the case on hand. Thus the Tribunal allowed the appeals filed by the Revenue, thereby restored the order

of penalty made by the Assessing Officer. Aggrieved by the same, the present appeals have been filed by the Assessee.

6. Learned Counsel appearing for the Assessee pointed out that when the Assessee had voluntarily offered the income of the firm, in the absence

of any wilfulness in not disclosing the same, the question of levy of penalty did not arise. She pointed out that there was no concealment as such as

had been viewed by the assessing authority and as confirmed by the Tribunal.

7. Per contra, learned standing counsel appearing for the Revenue brought to our

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/senthamarai-constructions-appellant... 

attention the decisions of this Court reported in Late M.S.

Mohammed Marzook, rep. by M. Sulaiha Beevi (deceased) Legal heir and wife of late M.S. Mohamed Marzook and M. Shahul Hameed Vs.

The Income Tax Officer, M. Shahul Hameed Batcha, Legal Heir and son of Late M.S. Mohammed Marzook Vs. The Income Tax Officer

(formerly the Assistant Commissioner of Income Tax), and M. Sajjanraj Nahar Vs. The Commissioner of Income Tax, to which one of us was a

party, wherein this Court had elaborately considered the case law on the subject and pointed out to the decision in the case of Commissioner of

Income Tax Vs. Suresh Chandra Mittal, rendered after the introduction of Explanation to Section 271(1)(c) of the Income Tax Act and this Court

held that when the concealment of the income was with reference to the original return and there was no explanation at all as regards the non-

disclosure, the mere claim that the income was offered in the revised return, as a matter of purchasing peace, by itself, would not exonerate the

Assessee from the culpability. Having regard to the fact that the Assessee had not disclosed any reason for the omission in the original return and

that the revised return was filed only after the search, this Court held that penalty was leviable.

8. The facts herein are no different from the above said decision. As seen from the narration in the order of the Tribunal as well as that of the other

authorities, the Assessee filed the revised return in respect of the first two assessment years and filed the return for the first time for the last of the

assessment year only after search in the Managing Partner''s residence, wherein undisclosed cash and investments were found. The conduct of the

Assessee, hence, assumes significance in coming forward to disclose the income of the firm, which are relatable to the investments made by the

Managing Partner.

9. As rightly pointed out by the learned standing counsel appearing for the Revenue that when there is no satisfactory explanation as regards its

non-disclosure of the income in the original return and that the undisclosed income came to be shown only in the revised return, rightly the Tribunal

applied the law as declared by the Apex Court and by this Court.

10. In the circumstances, we do not find any justification to cancel the penalty levied by the Assessing Officer, which is admittedly a minimum

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/senthamarai-constructions-appellant… 

penalty. Accordingly, all the appeals fail and the same are dismissed. No costs. Consequently, T.C.M.P. Nos. 138 to 140 of 2005 are also

dismissed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/senthamarai-constructions-appellant… 