
(1954) 03 MAD CK 0028

In the Madras High Court

Case No : S.C.C.M.P. No"s. 2811 and 2813 of 1954

S.N. Namasivayan Chettiar

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 18-03-1954

Acts Referred:

Constitution of India, 1950 — Article 133
Income Tax Act, 1961 — Section 45

Citation : AIR 1954 Mad 879

Hon'ble Judges : Satyanarayana Rao, J;Rajagopalan, J

Bench : Division Bench

Advocate : Asst. Govt. Pleader, G.R. Jagadisa Ayyar, for the Appellant;

Final Decision : Dismissed

Judgement

Satyanarayana Rao, J.—These two applications are for leave to appeal to the Supreme Court under Article 133 of the Constitution. The dispute related to the payment of Income Tax and excess profits tax. There is no dispute regarding the amount, as the assessments have become final.

The petitioner claimed that, under the proviso to Section 45 of the Income Tax Act as there was a restriction by the law obtaining in Ceylon under which he was not allowed to remit his foreign income into the taxable territory during the relevant period, he should not be treated as defaulter. His contention was that the Income Tax Department had no jurisdiction to treat him as a defaulter.

It was admitted before us that the restriction imposed by the Government of Ceylon was not absolute, but that remittances could be made if a proper case was made out for such remittances. It was found by us in the order against which these applications for leave have been filed, that the petitioner did not take any real steps to obtain permission from the Ceylon Government to remit money into the taxable territory and that, therefore, the point raised by him of lack of jurisdiction was without any substance.

We, however, gave him an opportunity to prove, if possible to the satisfaction of the Commissioner of Income Tax that he made bona fide efforts to remit the foreign income into the taxable territory , and that notwithstanding such efforts he was not successful. For this purpose we asked the Department, through their counsel, Mr. Rama Bao Sahib, to stay their hands for a period of two months. The dispute, therefore, related not to the amount but to the question whether the bar under the proviso to Section 45 of the Income Tax Act would apply to the case. As the assessee failed to establish that, the department treated him as a defaulter and proceeded to collect the tax.

The question before us was whether or not the proviso should be applied to the case and whether the assessee made any efforts to remit the foreign income into the taxable territory by making the necessary application to the concerned authorities in the foreign territory. The applicant for leave contends that he is entitled to leave automatically as the case falls under Clause (1) (b) of Article 133, as our order involves directly or indirectly some claim or question respecting property "of the like amount or value", that is, not less than Rs. 20,000. The construction of the analogous provision under the CPC and also under the Constitution was the subject-matter of interpretation by this Court in the latest case on the point in -- Palagani Balarami Reddy Vs. Shaik Masthan Saheb, which follows earlier decisions. For the reasons given in that decision, we are of opinion that Clause (1) (b) has no application to the case, as there is no dispute directly or indirectly regarding the amount of the tax which the assessee is bound to pay. The question whether the tax should be paid immediately or should be postponed to a future date is not one that is capable of valuation.

2 It, therefore, follows that the only clause on which reliance could be placed by the assessee is Clause (1)(c) of Article 133. The facts stated in the order clearly show that there is no substantial question of law involved which would justify us in certifying that the case is a fit one for appeal to the Supreme Court. The petitions are therefore dismissed with costs in one (Rs. 150).