

Commissioner of Income-tax, A.P.

Vs

J. Daveda (dead) by Lrs. and D. Krishnamurthy

Civil Appeal Nos. 402 with 942-944 of 1976

(M.M. Punchhi, S.C. Agarwal JJ)

31.10.1990

JUDGMENT

1. These appeals have arisen against similar orders of the High Court of Andhra Pradesh failing to be persuaded, Income-tax Appellate Tribunal before hand, to refer the following three questions of law to the High Court said to arise from the appellate orders of the Income tax Appellate Tribunal, Hyderabad. Those questions are taken and reproduced below from one case and in the others they are substantially same.,

"(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that by the levy of interest under Section 139 of the Income tax Act, 1961 the Income-tax Officer must be deemed to have granted time up to the date of filing the return of income?"

"(2) Whether on the facts and in the circumstances of the case the Appellate Tribunal was correct in holding that even if the return was treated as filed under Section 139(4) penalty was not liable?"

"(3) Whether on the facts and in the circumstances of the case, the penalty liable within the meaning of Section 271 (1)(a) shall be with reference to the net tax remaining due and payable at the date of final assessment after deduction of the tax paid under Section 40-A/ 141?"

2. Learned counsel for the parties are agreed that answer to question No. 1 would be against the Revenue and in favour of the respondent assessee on the ratio of Commr. of Income-tax, A.P. v. M. Chandra Sekhar, (1985) 151 ITR 433 : (AIR 1985 SC 114) and thus would not be required to be referred. If this is so, as it has to be, the attempt to have question No. 3 alone referred in isolation of the answer to question No. 1 is a meaningless exercise because if the Income-tax Officer must be deemed to have granted time up to the date of filing the return of income, which power he undoubtedly had, the question of levying any penalty under Section 271(1)(a) on the basis of failure to furnish return within time would in no event arise under Income-tax Act, 1961.

3. In this view of the matter there is nothing further in these appeals which accordingly are dismissed. In the circumstances of the cases there shall be no orders as to costs.

Appeals dismissed.

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