

# ANDHRA PRADESH HIGH COURT

Raja of Venkatagiri

Vs

Commissioner of Income Tax

(Subba Rao, J.)

12.01.1955

## JUDGEMENT

**Subba Rao, J.**

( 1. ) THE Tribunal, Madras Bench, referred to the High Court of Madras under S. 66(1) of the Indian IT Act the following two questions of law:"(1) Whether the appeal did not lie to the AAC, against the order of the ITO under S. 46(1) because of the first proviso to S. 30(1) of the Act ? and (2) Whether the failure of the ITO to object to the competency of the appeal gave the AAC jurisdiction to hear and decide the appeal ?" The case has been transferred to this Court after its constitution.

( 2. ) THE undisputed facts that give rise to the reference may be briefly stated. For the asst. yr. 1948 49, the assessee was assessed to income tax on a sum of Rs. 2,19,541 2 0 and was directed to pay the same on or before 5th March, 1949. On 8th March, 1949, he sent a cheque for Rs. 25,000 and prayed for the payment of the balance in instalments of Rs. 25,000 per mensem. On 11th March, 1949, the ITO refused to grant time as the assessee made default in the payment of tax. On 19th March, 1949, the ITO levied a penalty of Rs. 2,000 and called upon the assessee to pay up the tax and penalty by 25th March, 1949. After giving some extensions of time for the payment of the balance the ITO on 28th March, 1949, levied a further penalty of Rs. 25,000. On 25th April, 1949, the assessee sent to the ITO a cheque for Rs. 25,000 towards penalty and a further cheque for Rs. 30,000 in part payment of the tax due. The CIT, Madras, by his order, dt. 2nd May, 1949, permitted the assessee to pay the balance of tax in monthly instalments of Rs. 40,000. On 21st April, 1949, the assessee filed two appeals to the AAC, 'A' Range, Madras, against the said penalties of Rs. 2,000 and Rs. 25,000 imposed on him under S. 46(1) of the IT Act. The AAC, by his order, dt. 19th Oct., 1949, disposed of the appeals. He confirmed the imposition of penalty of Rs. 2,000 but cancelled the penalty of Rs. 25,000. It may be mentioned that, by that date, the assessee had paid all the amounts due from him in accordance with the terms of the order of instalment made by the CIT. The assessee preferred an appeal to the Tribunal against the order of the AAC confirming the penalty of Rs. 2,000. The Department preferred an appeal against the order, cancelling the penalty of Rs. 25,000. The Tribunal dismissed the appeal filed by the assessee but allowed the appeal preferred by the Department on the ground that, on the date when the assessee filed the appeal the tax was due and, as the tax was

not paid before the filing of the appeal, the appeal was incompetent. The assessee applied to the Tribunal under S. 66(1) of the Act for referring the aforesaid two questions and they have accordingly done so. Learned counsel for the assessee contended that the condition of pre payment of tax laid down in the proviso to S. 30(1) applies only to the final disposal of the appeal and not to its presentation. To put it differently, he would contend that if the condition is complied with on the date when the appeal is disposed of, the appeal is competent notwithstanding the fact that on the date of the presentation of the appeal, the condition was not satisfied. To appreciate this argument, the relevant provisions of the Indian IT Act may be read: "Sec. 46(1) When an assessee is in default in making a payment of income tax, the ITO may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty." "Sec. 30(1) Any assessee.....objecting to any order under sub s. (1) of S. 46.....may appeal to the AAC against....such order : Provided that no appeal shall lie against an order under sub s. (1) of S. 46 unless the tax has been paid." "Sec. 30(2) The appeal shall ordinarily be presented within 30 days....of receipt of the notice of demand relating to the assessment or penalty objected to....but the AAC may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period."

( 3. ) A combined reading of the provisions of S. 30(1) and (2) leaves no doubt in our mind that the payment of the tax is a condition precedent for the maintainability of the appeal. The proviso to s. 30, by indicating that no appeal shall lie unless the tax has been paid, clearly makes such payment of tax a condition. Sub s. (2) only limits the period of time within which such appeal shall be filed. To read the two sub sections as dealing with a right of appeal at two different points of time is not only illogical but will lead to anomalies. An aggrieved party may file an incompetent appeal to satisfy the period of limitation with an off chance of paying the arrears at any time before the appeal is disposed of. The maintainability of the appeal would then depend upon the fortuitous circumstance of the posting of the appeal for hearing before or after the payment of the tax. We would, therefore, hold that an appeal presented within the meaning of sub s. (2) of S. 30 should comply with the condition laid down in the proviso to sub s. (1). ;