

**Commissioner of Income-tax Vs. Ceanattu Firms**

**Commissioner of Income-tax Vs. Ceanattu Firms**

**SooperKanoon Citation :** [sooperkanoon.com/721554](http://sooperkanoon.com/721554)

**Court :** Kerala

**Decided On :** Feb-21-1986

**Reported in :** (1987)59CTR(Ker)143; [1986]160ITR588(Ker)

**Judge :** P.C. Balakrishna Menon and; M. Fathima Beevi, JJ.

**Acts :** [Income Tax Act, 1961](#) - Sections 140A, 140A(1), 140A(3) and 256; Taxation Laws (Amendment) Act, 1975

**Appeal No. :** Income-tax Reference Nos. 301 and 302 of 1980

**Appellant :** Commissioner of Income-tax

**Respondent :** Ceanattu Firms

**Advocate for Def. :** G. Sivarajan, Adv.

**Advocate for Pet/Ap. :** P.K.R. Menon and; N.R.K. Nair, Advs.

**Judgement :**

P.C. Balakrishna Menon, J.

1. The Income-tax Appellate Tribunal, Cochin Bench, has referred the following questions of law to this court, under Section 256(1) of the Income-tax Act, 1961 (' the Act' for short).

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Income-tax Officer could not have levied any penalty In the present case under the provisions of Section 140A(1) as it stood on June 24, 1975, i.e., after the amendment on April 1, 1971, but before the amendment on April 1, 1976, and consequently whether the Tribunal was justified in cancelling the penalty imposed of Rs. 5,000 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amended provision of Section 140A(3) which came into effect on April I, 1976, could not be invoked in the present case and consequently whether the Tribunal was justified in cancelling the penalty imposed under Section 140A(3) of Rs. 8,868 '

2. The assessee, a registered firm, filed its return of income relating to the assessment year 1974-75, on May 24, 1975. He was bound to pay the tax due as per the return within thirty days after filing the return as per the provisions of Section 140A(1) of the Act as it stood at the relevant time. The assessee did not comply with this requirement of the law and the Income-tax Officer initiated penalty proceedings as per notice dated August 5, 1975. By order dated October 17, 1977, the Income-tax Officer imposed a penalty of Rs. 5,000 for the default of the assessee for non-payment of the tax due as per the return until March 31, 1976, and a further penalty of Rs. 8,868 for the continued default till September 3, 1977, on which date a final order of assessment was passed.

3. On appeal, at the instance of the assessee, the Appellate Assistant Commissioner confirmed the order of penalty relating to the period up to March 31, 1976, and cancelled the order relating to the subsequent period. Both the assessee and the Department appealed to the Income-tax Appellate Tribunal. The Tribunal held that the cancellation of penalty for the period after April 1, 1976, is perfectly valid in the light of the amendment of Section 140A as per the Taxation Laws (Amendment) Act, 1975, that had come into force on April 1, 1976. The penalty relating to the earlier period up to March 31, 1976, was also cancelled for the reason that Section 140A(3) of the Act as it stood at the relevant time was declared invalid by the Madras High Court in the decision in *A.M. Sali Maricar v. ITO* : [1973]90ITR116(Mad) and the law as declared by a competent court is binding on the Tribunal.

4. Section 140A was introduced by the Finance Act, 1964, with effect from April 1, 1964. The section was amended by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971. Sub-section (1) of Section 140A as amended requires the tax on self-assessment to be paid within thirty days after the filing of the return. Sub-section (3) confers a discretionary power on the Income-tax Officer to impose penalty as provided for thereunder for failure of compliance of the requirements of Sub-section (1).

5. Section 140A was further amended by the Taxation Laws (Amendment) Act, 1975, and the amended section came into force with effect from April 1, 1976. Sub-section (1) of Section 140A as amended in 1976 required the assessee to pay the tax due on self-assessment and produce proof of such payment along with his return. Sub-section (3) empowers the Income-tax Officer to impose a penalty at the rate of 2% of the tax due for every month during which the default continues.

6. The present proceedings relate to the assessment year 1974-75, the return in respect of which was filed on May 24, 1975. Section 140A(1) as it stood on that date required the assessee to pay the tax due on self-assessment within thirty days from May 24, 1975. The requirement of Sub-section (1) of Section 140A after its amendment that came into force on April 1, 1976, was totally different and the assessee cannot be held liable to penalty as per the amended provision of Sub-section (3). We had in a recent judgment in *CIT v. Haji K. Assainar and Co.* : [1986]158ITR717(Ker) , held that no penalty under the amended Sub-section (3) of Section 140A can be imposed in respect of a default of a different nature for non-compliance of the requirements of Sub-section (1) as it stood prior to the amendment in 1976. We are, therefore, clearly of the view that the Tribunal was perfectly right in dismissing the Department's appeal against the decision of the Appellate Assistant Commissioner cancelling the penalty imposed by the Income-tax Officer with respect to the period from April 1, 1976, to September 3, 1977.

7. The default of non-compliance of the requirements of Sub-section (1) of Section 140A as it stood prior to its amendment in 1976 continued till March 31, 1976, and the Income-tax Officer has a discretion under Sub-section (3) as it stood at the relevant time to impose a penalty on the assessee within the limits prescribed thereunder. The Tribunal has, however, cancelled that part of the penalty also on the ground that Section 140A(3) as amended by the Taxation Laws (Amendment) Act, 1970, was held *ultra vires* and void by a Division Bench of the Madras High Court in the decision in *A. M. Sail Maricar's case* : [1973]90ITR116(Mad) .

8. Regarding the binding nature of the decision of the Madras High Court on Tribunals outside its area of jurisdiction, a Division Bench of the Bombay High Court in *CIT v. Smt. Godavaridevi Saraf* : [1978]113ITR589(Bom) :

' Actually, the question of authoritative or persuasive decision does not arise in the present case because a Tribunal constituted under the Act has no jurisdiction to go into the question of constitutionality of the provisions of that statute. It should not be overlooked that the Income-tax Act is an All-India statute and if an Income-tax Tribunal in Madras, in view of the decision of the Madras High Court, has to proceed on the footing that Section 140A(3) was non-existent, the order of penalty thereunder cannot be imposed by the authority under the Act. Until a contrary decision is given by any other competent High Court, which is binding on a Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the

High Court, though of another State, is the final law of the land. '

9. The same view was expressed by a Division Bench of the Allahabad High Court in CIT v. Baku Raw Kichha [1980] 3 Taxman 232,

10. Counsel for the Revenue points out the decisions in Kashiram v. ITO : [1977]107ITR825(AP) , CIT v. Vrajlal Manilal & Co. : [1981]127ITR512(MP) , Addl. CIT v. Free Wheels India Ltd. [1982] 137 ITR 378 , Addl. CIT v. Sarvaraya Textiles Ltd. : [1982]137ITR369(AP) and Seva Ram v. ITO , where the view expressed by the Madras High Court in Sali Maricar's case : [1973]90ITR116(Mad) , regarding the validity of Section 140A(3) of the Income-tax Act as amended by the Taxation Laws (Amendment) Act, 1970, has not been accepted and Sub-section (3) of Section 140A of the Act had been held to be perfectly valid and not violative of Article 19(1)(f) of the Constitution. Counsel further points out that the decision of the Andhra Pradesh High Court in Kashiram's case : [1977]107ITR825(AP) was rendered prior to the decision of the Tribunal and that has been completely overlooked by the Tribunal in following the decision of the Madras High Court in Sali Maricar's case : [1973]90ITR116(Mad) . When hearing a reference under Section 256 of the Income-tax Act, it is not open to us to pronounce upon the constitutional validity of Section 140A(3) of the Act as it stood prior to April 1, 1976. We find there are conflicting views expressed by competent courts regarding its validity. The power conferred on the Income-tax Officer to impose a penalty under Sub-section (3) of Section 140A is purely discretionary and the power itself is of doubtful validity. We are, therefore, of the view that the Tribunal was perfectly justified in cancelling the penalty relating to the period prior to March 31, 1976.

11. We answer both the questions in the affirmative, i.e., in favour of the assessee and against the Revenue. There will be no order as to costs.

12. A copy of this judgment under the seal of the court and the signature of the Registrar will be forwarded to the Income-tax Appellate Tribunal, Cochin Bench.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**