

M. Kumaran Vs. First Additional Income-tax Officer, Kozhikode.

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Court : Kerala

Decided On : Nov-01-1957

Reported in : [1958]33ITR290(Ker)

Appeal No. : Writ Petition No. 430 of 1956 (M)

Appellant : M. Kumaran

Respondent : First Additional Income-tax Officer, Kozhikode.

Judgement :

M. S. MENON, J. - The prayer in the petition is worded as follows :

'For the reasps stated in the accompanying affidavit the honble court may be pleased to direct the issue of a writ of certiorari or any other appropriate writ, call for records and quash the order of the First Additional Income-tax Act in G.I. No. 697-K dated March 13, 1956, and pass such further or other orders as this honble court may deem fit.'

2. In Exhibit D, the order impugned, the respondent said :

'The assessee was taken on file for the first time for 1947-48 assessment. Previously the business was being conducted by the Hindu undivided family of Messrs. Moothorakutty and Sons till March 31, 1946, and from April 1, 1946 partition in the family was recognised. Hence the assessee who is a member of the family got half share in the business and became a new assessee from 1947-

48 assessment. He filed a voluntary return of income on September 10, 1947. But he did not file an estimate of his total income and pay advance tax as required by section 18A(3) of the Act for 1947-48. The income returned was Rs. 42,173 and income assessed is Rs. 64,602. Thus there is a default under section 18A(3) and penal interest is leviable under section 18A(8) of the Act. In the original assessment completed on March 26, 1952, penal interest was omitted to be levied by mistake. This a mistake apparent on the record, rectifiable under section 35(1) of the Act. Accordingly the assessee's objection against such rectification were invited in this office letter dated February 4, 1956. The assessee in his reply dated February 18, 1956, has stated that this is not a mistake apparent on the record and the Income-tax Officer has no power to review his own assessment. But levy of penal interest is mandatory and omission to levy the interest is a mistake apparent on the record. Hence the assessee's objection is overruled. The original order of assessment is accordingly rectified under section 35(1) of the Act';

and directed the petitioner to pay by way of penal interest a sum of Rs. 5,308-9-0 on or before March 25, 1956.

3. Sub-section (1) of section 35 of the Indian Income-tax Act, 1922, omitting the provisos thereto, reads as follows :

'The Commissioner or Appellate Assistant commissioner may, at any time within four years from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33A and the Income-tax Officer may, at any time within four years from the date of any assessment order or refunded order passed by him on his own motion rectify any mistake apparent from the record of the appeal, revision, assessment or refund as the case may be, and shall within the like period rectify any mistake which has been brought to his notice by an assessee.'

4. The only question for consideration is whether the imposition of penal interest by Exhibit D is the rectification of a mistake apparent from the record of the assessment or not. The contention of the respondent is stated as follows in his affidavit dated August 28, 1957 :

'The petitioner was assessed to income-tax for the year 1947-48 as alleged in his affidavit. When completing the assessment, the failure of the petitioner to file estimate of his total income, and pay advance tax under section 18A, and the consequent liability for penal interest, were, by an oversight, omitted to be considered. Since the mistake was patent, action was taken under section 35 of the Income-tax Act, and the mistake was rectified by the order dated March 13, 1956, impugned herein.....

The provisions of section 18A are mandatory in nature and the omission to give effect to them when the requisite conditions were present, is purely an accidental mistake apparent on the face of the records which can be rectified under section 35.'

5. A mistake is an omission made not by design, but by mischance (*Sandford v. Beal*) and a 'mistake apparent' is a mistake that is manifest, plain or obvious, a mistake that can be raised without a debate or a dissertation. There can be no doubt that a clerical or arithmetical error would certainly amount to a mistake apparent from the record. It is equally clear that section 35 will not enable a general revision or review of the orders passed (*Commissioner of Income-tax v. Sevugan*) or a reconsideration of the factual conclusions reached in a case.

6. In *Sidhramappa Andannappa Manvi v. Commissioner of Income-tax, Chagla*, C.J., said :

'Now the power is undoubtedly a limited power; it is not a power of revision or review, but it is limited to correcting only those mistakes which are apparent on the record. A mistake must be patent on the record ; it must not be a mistake which can be discovered by a process of elucidation, or argument, or debate.'

7. Sub-section (3) of section 18A provides :

'Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following is likely to

exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees, send to the Income-tax Officer an estimate of the tax payable by him on that part of his income to which the provisions of section 18 do not apply of the said previous year calculated in the manner laid down in sub-section (1) and shall pay the amount, on such of the dates specified in that sub-section as have not expired, by instalments which may be revised according to the proviso to sub-section (2)';

and sub-section (8) of section 18A :

'Where, on making the regular assessment, the Income-tax Officer finds that no payment of tax has been made in accordance with the foregoing provisions of this section, interest calculated in the manner laid down in sub-section (6) shall be added to the tax as determined on the basis of the regular assessment.'

It is admitted that the provisions of sub-section (3) have not been complied with and it is evident from sub-section (8) that the Income-tax Officer had the duty to add to the tax interest calculated in the manner laid down in sub-section (6). The failure to discharge this duty in Exhibit D is, as I understand it, nothing more or other than an obvious error apparent from the record of the assessment.

8. Such being my conclusion, this petition should fail and has to be dismissed. Judgment accordingly.

9. In the circumstances of the case I leave the parties to bear their respective costs.

Petition dismissed.

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