

V. Vs. R. N. Vr. Nagappa Chettiar V. Income-tax Officer, Karaikudi, and Another.

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Court : Chennai

Decided On : Apr-12-1957

Reported in : [1958]33ITR226(Mad)

Appeal No. : Writ Petition No. 180 of 1955

Appellant : V.

Respondent : R. N. Vr. Nagappa Chettiar V. Income-tax Officer, Karaikudi, and Another.

Judgement :

RAJAGOPALA AYYANGAR, J. - This is an application for the issue of a writ of certiorari to quash the certificates issued under section 46(2) of the Income-tax Act, by the Income-tax Officer of Karaikudi directing the Collector of Ramanthapuram to collect the arrears of income-tax due by the petitioner and assessed for the years 1939-40, 1940-41 and 1941-42.

The point that is raised is a very short one, and the question is whether the certificates issued under section 46(2) of the Income-tax Act in regard to these demands were within time. The assessments for the years 1939-40 and 194-41 were completed the relative demand was issued on February 28, 1947. It is now common ground that the certificate for the recovery of this demand under section

46(2) of the Act was issued on March 9, 1947. This is well within the period of one year allowed under the section and is therefore in time.

It is in regard to the certificate for the demand for 1941-42 that there is any real controversy between the parties. The Income-tax assessment in regard to this year was completed on January 31, 1942, and the assessee was granted by the assessment order time to make payment till February 25, 1942. But beyond that date at the instance of the assessee, time was being extended from time to time. Of these extensions we need mention only that granted on June 30, 1947, December 30, 1947, and finally on April 20, 1948. The last of the extension which were granted by the officer terminated on February 19, 1949, when the assessee was directed to pay the demand immediately. The Collectors certificate in regard to the assessment for this year was issued on March 21, 1951. If the period were calculated from February 19, 1949, when the last demand was made and when the assessee was called on to pay the immediately the certificate would appear to be obviously out of time. The contention however which Mr. Rama Rao Sahib, the learned counsel for the Department, urged was that the assessee had put in an application for extension of time on March 10, 1949, and that though no formal orders were passed on that application still the fact that the Income-tax Officer did not proceed to make the collection was tantamount to granting time so as to bring this within the period of extension permitted under section 46(7). We are unable to accept this argument. The last demand was on February 19, 1949, and that required the assessee to pay immediately. There was no further order calling upon the petitioner to pay the income-tax due at any later date. In the absence of a formal order granting the time prayed for by the petitioner, we cannot hold that there has been an extension of time for payment as required by section 46(7). The result of this is that the certificate issued on March 21, 1951, in relation to the assessment for the year 1941-42 was beyond time and the writ petition in so far as it prays for relief in regard to this assessment year must be allowed. In regard to the rest, the rule is discharged. There will be no order as to costs since neither party has succeeded in full.

Petition allowed in part.

