

**Cit Vs. N. Sheela Devi**

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**SooperKanoon Citation :** [sooperkanoon.com/829235](http://sooperkanoon.com/829235)

**Court :** Chennai

**Decided On :** Dec-03-2001

**Reported in :** (2002)176CTR(Mad)236

**Appeal No. :** Tax Case Nos. 1265 to 1269 of 1988 3 December 2001 A.Y. 1966-67 & 1970-71 to 1973-74

**Appellant :** Cit

**Respondent :** N. Sheela Devi

**Advocate for Pet/Ap. :** T Ravikumar, *for the Revenue* None, *for the Assessee*

**Judgement :**

**R. Jayasimha babu, J.**

The references are at the instance of the revenue in respect of the assessment years 1966-67, 1970-71 and 1971-72 to 1973-74.

2. The assessee who was a cine artist had made a declaration under the Voluntary Disclosure of Income and Wealth Scheme, 1975 which came into effect on 8-10-1975, and was replaced by Voluntary Disclosure of Income and Wealth Act, 1976 (Act 8 of 1976). The tax payable on the amount voluntarily disclosed was not paid along with the, statement disclosing the income, even though the last date for payment had been extended from time-to-time, the last extension being till

the first day of January, 1978.

3. The assessing officer initiated penalty proceedings under section 271(1)(c) of the Income Tax Act on the ground of concealment of income and levied the minimum penalty. The assessee contested that levy by way of appeal contending that the delay in payment of the tax was not to be attributed entirely to her but was in part due to the fact that the certificate that she had sought for under section 230A of the Income Tax Act for the sale of one of her properties, was given to her only on 2-5-1978, even though she had applied for it more than a year earlier in March 1977. The appeal having been unsuccessful, she carried the matter to the Tribunal which accepted her case and held that the penalty was not imposable. The assessee had also urged before the Tribunal that the Income Tax Officer had no jurisdiction to levy the penalty as he would not have been competent to make such a levy as on the date of filing of the disclosure statement, even though he was competent to do so as on the date the order imposing the penalty was made. That submission also found favour with the Tribunal.

4. In this reference the revenue has questioned the correctness of that view of the Tribunal, namely notwithstanding the non-payment of the tax along with the statement of voluntary disclosure of of income, penalty was not to be levied, and that the authority competent to levy penalty is only the officer who was competent to do so as on the date the statement was filed, and not the officer who was competent to levy penalty as on the date the order levying penalty was made.

5. The scheme under which the voluntary disclosure was made by the assessee clearly required that the tax be paid along with the statement which admittedly was not done. The revenue cannot be held to be responsible for such non payment, merely because a certificate for the sale of one of her properties had not been issued to her in time. It was the duty of the assessee to comply with the requirement of the scheme if she wanted to have the advantage and benefits provided therein.

6. Section 14 of the Voluntary Disclosure of Income and Wealth Act, which is identical to the scheme clearly sets out that the penalty has to be imposed where tax is not paid by the declarant according to the provisions of the section 5 of the

Act. That section prescribes the last date before which payment was required to be made. The assessee had not paid those amounts within that date and was not eligible to take advantage of immunity conferred under section 14 of the scheme. The levy of penalty was permissible.

7. The Tribunal's view, in the circumstances, cannot be upheld and the first two questions which concern that issue are answered in favour of the revenue and against the assessee.

8. The other question referred regarding the competence of the officer levying penalty, must also be answered in favour of the revenue and against the assessee, in the light of the judgment of this court in the case of CIT v. N. Rama Devi : [2001]248ITR654(Mad) , wherein it has been held that it is the date of assessment which is relevant for identifying the officer competent to initiate penalty proceedings, as the penalty for concealment of income for non-furnishing or furnishing of inaccurate particulars of income can be imposed only when the assessing authority is satisfied that there is concealment of income in furnishing particulars. The penalty proceedings can be initiated only after the assessment was made with respect to such concealed income.

9. Having regard to the law laid down, that question also is answered in favour of the revenue and against the assessee.