

**(2002) 08 MAD CK 0199**

**Madras High Court**

**Case No:** T.C. No"s. 1172 and 1173 of 1988

Ramnath Goenka (Decd. by L.  
Rs.)

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** Aug. 21, 2002

**Acts Referred:**

- Income Tax Act, 1961 - Section 271, 274
- Taxation Laws (Amendment) Act, 1975 - Section 274(2)

**Citation:** (2003) 259 ITR 229

**Hon'ble Judges:** R. Jayasimha Babu, J; K.P. Sivasubramaniam, J

**Bench:** Division Bench

**Advocate:** R. Kumar, for the Appellant; T.C.A. Ramanujam, for the Respondent

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### **Judgement**

R. Jayasimha Babu, J.

Two questions have been referred to us at the instance of the assessee. The first question is common to the assessment years 1972-73 and 1973-74. That question is as to whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding the order of the Inspecting Assistant Commissioner imposing penalty u/s 271(1)(c) having held that the law for the levy of the penalty is as it stood on the date when the penalty was imposed, that is as amended with effect from April 1, 1976.

2. That question is required to be answered against the assessee, and in favour of the Revenue in the light of the law laid down by the Supreme Court in the case of [Commissioner of Income Tax, Bangalore Vs. Smt. R. Sharadamma](#), wherein, the apex court held that the Inspecting Assistant Commissioner does not lose the jurisdiction to continue with the proceedings pending before him on March 31, 1976, by virtue of the deletion of Sub-section (2) of Section 274 by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976. The court held that

(headnote) :

"He was entitled to continue with those proceedings and pass appropriate orders according to law."

3. In this case, the proceedings were pending before the Inspecting Assistant Commissioner as on March 31, 1976, and the order of penalty had been imposed by him subsequent to that date. The order so made was within his jurisdiction,

4. The first question is answered against the assessee and in favour of the Revenue.

5. The second question referred concerns the assessment year 1973-74. That question is as to whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the penalty u/s 271(1)(c)(iii) is imposable even though the assessment for the year has resulted in a net loss and there is no total income assessed for the year and there is no tax payable thereon.

6. There is no dispute about the fact that for this assessment year, the assessee even after the recomputation made by the Inspecting Assistant Commissioner was found to have suffered a loss. No amount was assessed on the assessee as tax for this year.

7. This court in the case of [ADDITIONAL COMMISSIONER OF Income Tax, MADRAS-II Vs. MURUGAN TIMBER DEPOT.,](#) , after considering Sub-clauses (i), (ii) and (iii) in Sub-section 271(1)(c) of the Act held that (page 104) :

"A perusal of all the three clauses in Section 271(1), namely, Clauses (i), (ii) and (iii), will clearly indicate that the penalty contemplated in all the three clauses is a measure of the tax payable by the assessee. In other words, if no tax was payable by the assessee, there will be no penalty which could be levied on the assessee. As a matter of fact, the language of Clauses (i), (ii) and (iii) are such as there could be no case in which penalty could be levied where no tax is payable by the assessee since the quantification of the penalty is totally dependent upon the tax payable by the assessee... Therefore, the conclusion is irresistible that when an assessee is not liable to pay any tax, no penalty can be levied on the said assessee."

8. In the case of [Commissioner of Income Tax Vs. C.R. Niranjan,](#) , this court held that penalty is not exigible on loss.

9. A similar view was taken by the Punjab and Haryana High Court in the case of [Commissioner of Income Tax Vs. Prithipal Singh and Co.,](#) wherein, the court held that :

"Penalty imposed is paid in addition to the tax payable. When there is no tax payable, the question of any penalty does not arise. In fact, evasion of tax is the sine qua non for imposition of penalty."

10. The court also observed that (page 71) :

"The penal provisions of Section 271(1)(c), therefore, are attracted only in the case of an assessee having positive income and not loss, as the question of concealment of income to avoid payment of tax would arise only in the former case. Penalty is a deterrent measure to prevent evasion of tax and when there was no tax payable, there could not be any such evasion so as to provide a scope for levying any penalty."

11. The Supreme Court dismissed the appeal that had been preferred against the judgment of the Punjab and Haryana High Court. The decision of the Supreme Court is reported as [Commissioner of Income Tax Vs. Prithipal Singh and Co.,](#) .

12. The High Court of Kerala in the case of [Commissioner of Income Tax Vs. N. Krishnan,](#) has also taken a view similar to that expressed by this court and the Punjab and Haryana High Court. It was observed by that court that (page 49) :

"It is amply clear from a perusal of Section 271(1)(c) that penalty could be determined with reference to the amount of tax and unless tax is determined penalty could not be quantified ... when penalty cannot be quantified in the absence of determination of tax, it goes without saying that no penalty could be imposed."

13. Learned counsel for the Revenue invited our attention to another decision of the Kerala High Court which, in his submission, has taken a contrary view. The case relied on was the case of [Commissioner of Income Tax Vs. India Sea Foods,](#) . The court in that case construed the term "income" in Section 271 as referring to the total income, and not merely the total taxable income of the assessee.

14. Having regard to the law consistently laid down by this court that penalty is imposable only in cases where tax has been levied, and that no penalty can be levied when the result of the computation made by the Assessing Officer is a loss, and also having regard to the fact that the Supreme Court dismissed the appeal which had been preferred against the judgment of the Punjab and Haryana High Court which had taken a view similar to that taken by this court, it must be held that the Tribunal was in error in holding that penalty was leviable even when the assessment did not show any taxable income, but had showed net loss.

15. The second question referred to us is answered in favour of the assessee, and against the Revenue.