

(2002) 10 MAD CK 0164

Madras High Court

Case No: T.C. No. 52 of 1998

Commissioner of Income Tax

APPELLANT

Vs

Chidambaram Construction Co.

RESPONDENT

Date of Decision: Oct. 7, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 119, 143(1), 263

Citation: (2003) 261 ITR 754

Hon'ble Judges: R. Jayasimha Babu, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: Pushya Sitaraman, for the Appellant; P.P.S. Janardhana Raja, for the Respondent

Judgement

R. Jayasimha Babu, J.

The question referred is,

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in cancelling the order of the Commissioner of Income Tax u/s 263 without going into the question whether the Commissioner had validly exercised his powers u/s 263 of the Income Tax Act, 1961 ?"

2. The assessment year is 1985-86.

3. A summary assessment was made u/s 143(1) of the Income Tax Act which was revised by the Commissioner u/s 263 of the Act. The Commissioner held that the assessee was not entitled to deduction of a sum of Rs. 31,396 u/s 80HH of the Act, and that there was a revenue loss of Rs. 31,396. The Commissioner was thus of the view that the order of assessment was erroneous and was prejudicial to the Revenue. The Tribunal set aside the order of the Commissioner on the sole ground that the assessment made u/s 143(1) of the Act is not revisable u/s 263 of the Act.

4. Section 263 of the Income Tax Act does not lay down any such restriction on the powers of the Commissioner. A restriction which is not set out on the width of the Commissioner's revisional power is not to be lightly read into the statute. That there can be more than one remedy under the statute is by itself not a ground for denying one of the remedies provided under the statute for the benefit of the Revenue.

5. Learned counsel for the assessee placed before us a copy of a circular issued by the Director of Inspection (Audit) dated August 26, 1987, which purports to offer clarification regarding the summary assessment scheme and the scope of remedial action. In that circular, it is set out that the Member (R & A) of the Central Board of Direct Taxes had on a reference made to him by the Director of Inspection observed that,

"No remedial action is necessary in summary assessment cases, as the revenue loss if any is consciously suffered by the Government to utilize resources for scrutiny and investigations of larger cases. In such cases, the Commissioner of Income Tax should only inform audit that the cases are completed under the summary assessment scheme."

6. It is further stated in that circular that the observations of the member (R & A) reflect the views of the Board on the subject. The source of the power of the Director of Inspection to issue that circular and to convey the impression to the officers and the assessees that the Board has issued a directive even when the Board had not chosen to do so by exercising the powers u/s 119 of the Act is not set out in that circular. The views of one Member of the Board conveyed to the Director of Inspection cannot be regarded as a decision taken by the Board in order to bind all subordinate authorities.

7. Section 119 of the Income Tax Act deals with instructions to subordinate officers. Sub-section (1) thereof reads thus :

"The Board may, from time to time, issue such orders, instructions and directions to other Income Tax authorities as it may deem fit for the proper administration of this Act/and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board ..."

8. It is thus clear that the authorities empowered to issue the instructions is the Board, and not the Director of Inspection. The instructions are instructions which are approved by the Board, and not the instructions given by any one Member of the Board.

9. The circular issued by the Director of Inspection, therefore, cannot be regarded as disabling the Commissioner from exercising the statutory powers u/s 263 of the Act.

10. Learned counsel for the assessee placed reliance on the decision of the Madhya Pradesh High Court in the case of Nazir Singh v. CIT [2001] 252 ITR 820, wherein, it has been held that the circular of the Director of Inspection binds all Income Tax

authorities. With great respect, we are unable to agree, as we are unable to read that circular issued by the director as a circular issued by the Board in exercise of its powers u/s 119 of the Act.

11. We answer the question referred to us against the assessee, and in favour of the Revenue.