

In the High Court of Judicature at Madras

Date : 16..06..2009

Coram :

The Hon'ble Mr. Justice F.M. Ibrahim Kalifulla  
and  
The Hon'ble Mr. Justice B. Rajendran

Tax Case (Appeal) Nos: 332 to 3351 of 2009

Commissioner of Income Tax,  
Trichy.

... Appellant in the appeals

Vs.

**SHRI. PL. GANDHI**

C/o. M/s.Palaniappa Bros.  
N.S. Bose Road,  
Trichy.

... Respondent in all the appeals

Tax Case appeals under Section 260 A of the Income Tax Act against the common order of the Income Tax Appellate Tribunal, "C" Bench, Chennai, dated 15.05.2006 made in I.T.A. Nos: 1299, 1299, 1297 and 1297/Mds 2001 respectively for the assessment year 1997-98.

.. ..

For appellant : Mr. K. Subramaniam  
Standing Counsel for I.T.

## J U D G M E N T

(Judgment of the Court was  
delivered by F.M.Ibrahim Kalifulla, J.)

The common question of law involved in these appeals are,  
"Whether in the facts and circumstances of the case the Tribunal was right in holding that the notice under Section 143

(2) of the Income Tax Act, 1961 was issued after expiry of 12 months at the end of the month in which a return of income was filed and consequently, the assessment made came to be annulled ?"

2. Admittedly, the returns were all filed on 23.03.1998, 17.03.1998 and 23.03.1998 for the assessment year 1997-98 whereas the notice under Section 143 (2) came to be issued on 17.08.1999 in respect of all the three returns.

3. Having regard to the specific provision contained in Section 143 (2) of the Income Tax Act, the notices ought to have been issued on or before 31.03.1999. Any attempt made at the instance of the assessment officer to explain away the delay involved will be of no avail. In such circumstances, though this statutory discrepancy, which strikes at the very root of the issue came to be pointed out before the Commissioner (Appeals), unfortunately, the same was simply brushed aside by the said authority which obliged the respondent to approach the Tribunal and the Tribunal rightly came for the rescue of the respondent. Having regard to the specific stipulation in Section 143 (2) of the Act that the issuance of the notice under the said Section should be made within 12 months from the end of the month in which the return of income was filed, it was legally obligated upon the appellant to have issued the said notice on or before 31.03.1999. The Tribunal's conclusion of having annulled the order of assessment on that score being valid in law, the same cannot be found fault with. The question of law is answered against the appellant. All the appeals fail and are dismissed. Connected miscellaneous petitions are closed.

To

1. The Commissioner of Income Tax,  
Trichy.
2. The Presiding Officer,  
Income Tax Appellate Tribunal,  
" C " Bench, Chennai.
3. The Income Tax Officer  
City Ward I (2),  
Trichy