(1991) 03 KL CK 0023

In the High Court Of Kerala

Case No : Income-tax Reference No. 128 of 1989

Abdulla Mohammed APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 21-03-1991

Acts Referred:
Income Tax Act, 1961 — Section 56

Citation : (1991) 192 ITR 491

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : S.A. Nagendran and Premjit Negendran, for the Appellant; P.K. Ravindranatha Menon, Senior Advocate and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of an assessee to Income Tax, the Income Tax Appellate Tribunal has referred the following question of law for the decision of this court:

"Whether the Tribunal is justified in law in disallowing a sum of Rs. 1,25,000 claimed as loss for the assessment year 1972-73 ?"

2. The respondent is the Revenue. The matter relates to the assessment, year 1972-73 for which the accounting period ended on March 31, 1972, The assesses is an individual. On August 18, 1971, the Central Excise authorities intercepted his car near Kasargod in which the assessee was travelling alone. On search, the authorities found a carton of English crockery articles and a bag containing negotiable instruments such as bank drafts, travellers cheques and foreign currency notes which amounted, in terms of Indian currency in value, to more than a lakh of rupees. The assessee admitted that he was the owner of the car and that, on August 16, 1971, when he was in Bombay, a person by name Mohammed gave him a packet, which contained the goods seized then, with an instruction to hand over the same to someone else at Kasargod. The Customs authorities confiscated the crockery and the car. The negotiable instruments, dollar notes, etc., were handed over to the Foreign Exchange Enforcement

authorities on August 21, 1971. The said authority issued a show-cause notice to the assessee on August 1, 1972, for adjudication proceedings under the Foreign Exchange Regulation Act. In the said proceedings, the assessee stated that he was on his way from Bombay to Kasargod carrying five passengers in his car and when those passengers got down at Kasargod railway station, they had left behind the package in the car. This was entirely a different version. The foreign demand drafts, etc., were sold by the Reserve Bank and a sum of Rs. 1,42,773 was realised. The Income Tax authorities questioned the assessee about the nature and source of acquisition of these properties. The explanation of the assessee in that regard was rejected and a sum of Rs. 1,67,566 was estimated as the value of the seized goods. The said sum was added as "unexplained investment" under "other sources". The order of assessment was affirmed in appeal by the Appellate Assistant Commissioner of Income Tax, Calicut. But, the income from "other sources" estimated at Rs. 1,67,566 was reduced by Rs. 8,000. In second appeal, the Appellate Tribunal, by order dated July 31, 1978, affirmed the decision of the authorities below, but the amount to be estimated under "other sources" was limited to Rs. 1,25,000. Before the Appellate Tribunal, the assessee had an alternate contention that even if the amount is liable to be assessed as income from "other sources", since he had lost the amount, he will be entitled to deduct the loss. It was his plea that the Foreign Exchange Enforcement authorities seized the amount and took proceedings and so the amount was lost to him. It is in this perspective that the amount was claimed as a loss. This plea was rejected by the Income Tax Appellate Tribunal. It is thereafter, at the instance of the assessee, and in the proceedings initiated by him in O. P. No. 1049 of 1979, and as directed by this court that the question of law formulated hereinabove has been referred by the Income Tax Appellate Tribunal for the decision of this court.

3. We heard counsel for the applicant/assessee, Mr. S. A. Nagendran, and counsel for the Revenue. There is no dispute, at this stage, about the addition sustained by the Income Tax Appellate Tribunal under "other sources", in the sum of Rs. 1,25,000. The only plea that survives, at this stage, is the alternate plea taken up before the Appellate Tribunal that the said amount was lost to the assessee in proceedings under the Foreign Exchange Regulation Act and so the assessee would be entitled to deduct the same as a "loss". This aspect of the matter has been adverted to by the Appellate Tribunal in paragraphs 11 and 15 of its order dated July 31, 1978. The goods were seized and given to the Foreign Exchange Enforcement authorities. The said authority issued the initial notice to show cause why the seized goods should not be confiscated, only on August 1, 1972, which was long after the end of the accounting period (the accounting period with which we are concerned ended on March 31, 1972). There was no material available before the Income Tax Appellate Tribunal to substantiate the plea that any proceeding was taken by the Foreign Exchange Enforcement authorities within the accounting period which resulted in the loss of the amount seized from the assessee. It may be that as soon as the goods were seized and

given to the Foreign Exchange Enforcement authorities, the assessee was temporarily deprived of the possession and control of the goods. But, there is no material to show that a final adjudication was made or that the goods were permanently and irretrievably lost to the assessee much less in the accounting period. Be that as it may, so far as the proceedings under the Income Tax Act is concerned, it is conceded that the goods were seized from the assessee. The assessee had possession of the goods at the time of seizure. As the possessor/ owner of the goods, he could not give a satisfactory explanation about the source which had gone into acquisition of the said goods. The Income Tax Officer treated the money spent in acquiring the said goods as income of the assessee. It was affirmed by the Appellate Tribunal also. The said finding has become final. Once the assessee is found to be the owner of the seized goods under the Income Tax Act, it is for him to plead and prove that the goods were "lost" to him. So far as the Income Tax proceedings are concerned, there is no material to show that the said goods seized were lost to the assessee during the accounting period. The Income Tax Appellate Tribunal was justified in holding that the assessee cannot treat the value of the goods confiscated as a loss. The alternative plea put forward before the Appellate Tribunal was rightly rejected.

4. Therefore, we are of the view that the Appellate Tribunal was justified in disallowing a sum of Rs. 1,25,000 as loss for the assessment year 1972-73. We answer the question referred to this court in the affirmative against the assessee and in favour of the Revenue.

5. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

