(1989) 06 KL CK 0049

In the High Court Of Kerala

Case No : Original Petition No. 4384 of 1989-V

Associated Traders APPELLANT

Vs

Income Tax Officer and Others RESPONDENT

Date of Decision : 05-06-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Income Tax Act, 1961 — Section 273A

Citation : (1989) 180 ITR 406

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : G. Sivarajan, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

K. Sukumaran, J.—The petitioner, an assessee to Income Tax, challenges exhibit P-6 order of the Commissioner of Income Tax u/s 273A of the Income Tax Act, 1961. The grievances highlighted by the petitioner have been considered by the Commissioner in a well-reasoned but brief order. The return for the year 1984-86 was filed on July 31, 1984. The assessee was directed to appear before the Income Tax Officer to answer certain queries by a letter of the Income Tax Officer dated August 25, 1986. There were earlier communications also from the Department. The crucial fact is that a revised return was filed only on August 28, 1986. No doubt, it offered an additional income of Rs. 1 lakh. The desire to avail of the new amnesty scheme was also expressed by the assessee. It is that request that has been ultimately decided upon by exhibit P-6 order.

2. By that order, the Commissioner declined to interfere with the order of the officer.

3. Some of the aspects relevant for the consideration of the jurisdictional aspects had been considered by this court in a recent decision in Alukkas Jewellery Vs. Commissioner of Income Tax, . The Commissioner has adverted to various relevant factual details. The following finding is particularly relevant:

"One of the basic and vital conditions for waiving the penalty u/s 271(1)(c) is that the assessee has, prior to the detection by the Income Tax Officer of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars. In this case, the assessee filed a revised return admitting an additional income of Rs. 1 lakh only after specific instances of inflation of the value of purchases and such other manipulations squarely establishing concealment of income had been brought to the notice of the assessee by the Income Tax Officer."

4. Counsel for the petitioner submitted that for the very same reason, there is a case for scrutiny by this court, in the exercise of the powers under Article 226 of the Constitution. The exercise of the powers of the Commissioner, a high functionary in the Income Tax Department, cannot be ordinarily interfered with unless there be a jurisdictional deficiency or other vitiating circumstances. If various factors are properly adverted to and cogently considered and rational reasons are available for the exercise of the discretion in the way it had been done, ordinarily, the court will not interfere. It cannot be said that the approach and attitude and the ultimate conclusion reached by the Commissioner are so arbitrary or opposed to well-settled legal principles of law. Whether, in similar cases, a different approach had been made, is not a matter for examination by this court in this case, particularly in the absence of assuring particulars in support of such a broad contention. Even if the departmental, authority has taken a wrong view in one case or the other, that is no justification for the spreading of such an infirm decision to other areas as well. Article, 14 does not inject that there should be equality in illegality.

5. There is, however, some substance in the apprehension expressed by counsel that, if the observations of the Commissioner, particularly the second sentence in the extract made above, are literally understood de hors and divorced from the context, a penalty order could be automatically issued. The well-known difference in the content of the jurisdiction will have necessarily to be borne in mind by the quasi-judicial authority. The observations made by the Commissioner, in the context of the proceedings before him, would not compel a conclusion in relation to the more harmful and more damaging area of penalty jurisdiction. I am sure and it is hereby directed that the Income Tax Officer shall deal with the penalty matter untrammelled by the observations contained in exhibit P-6.

6. The writ petition is disposed as above.

