
(2002) 10 KL CK 0035
In the High Court Of Kerala
Case No : Income Tax A. No. 144 of 2000

C.K. Gopinathan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-10-2002

Acts Referred:

Income Tax Act, 1961 — Section 68, 69

Citation : (2003) 179 CTR 415 : (2003) 260 ITR 213

Hon'ble Judges : K. Balakrishnan Nair, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P. Balachandran, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—The appellant is an assessee to Income Tax on the files of the Assistant Commissioner of Income Tax, Circle I, Palakkad. The assessment year concerned is 1989-90, the previous year ended on March 31, 1989. The issue relates to the addition of a sum of Rs. 2,13,982 which was introduced in the accounts of the appellant. The explanation of the appellant was that the said amount came from the partnership firm, C. K. G. Agencies, of which the appellant is the managing partner. The Assessing Officer wanted the appellant to establish the same by producing the accounts of the firm. On verification of the accounts of the said firm, no corresponding debit entry was seen in the accounts. On that basis, the Assessing Officer proposed to make the addition of Rs. 2,13,982 as unaccounted income of the year and later completed the assessment by order dated March 27, 1991. The assessee took up the matter in appeal before the Commissioner of Income Tax (Appeals), Calicut, who by his order dated December 31, 1992, set aside the assessment and remitted the matter back to the Assessing Officer to consider the question relating to the addition of Rs. 2,13,982 afresh. Pursuant to the said order, the Assessing Officer again completed the assessment by order dated September 12, 1994, and an addition

of Rs. 2,13,982 was again made in the order. The appellant again took up the matter in appeal before the Commissioner of Income Tax (Appeals), Kozhikode. The appellate authority considered the contentions of the appellant, but dismissed the appeal with the following observations :

"The explanation offered in the present appeal proceedings also is not convincing. The appellant cannot get away with the explanation that the deficiency has arisen only on account of clerical error. The availability of cash from the firm in which the appellant is a partner on the basis of the additions made in the earlier year's assessment is also not proved. The very fact that the appellant is resorting to this explanation shows that the account books maintained by him are not correct and complete in all respects and an attempt has been made to suppress the income. In the circumstances, the explanation offered by the appellant deserves to be rejected. The Assessing Officer is justified in making the impugned addition of Rs. 2,13,982."

2. In second appeal by the appellant, the Tribunal confirmed the orders of the authorities below and dismissed the appeal.

3. Shri P. Balachandran, learned counsel appearing for the appellant, submitted that the appellant had credited certain amounts in his books of account relating to his proprietary business which had come from the firm, C. K. G. Agencies, Tirur, of which the appellant is the managing partner. Counsel further submits that the said amounts were not debited in the books of account of the firm especially due to an inadvertent clerical mistake. Counsel also submits that the appellant had clearly stated that the amounts credited in his books of account came from the partnership firm and the assessing authority had no case that the firm did not have sufficient funds to make such payments. Counsel further submits that the Assessing Officer was not justified in disbelieving the explanation offered by the appellant. He further submits that the appellate authority has also committed a mistake by not accepting the explanation offered by the appellant. Counsel also submits that merely because there were errors in regard to the dates, it would not be correct to hold that there were no cash received by the appellant on those dates and that in this context, it was stated that in the earlier years, there were additions in this case and so even if the discrepancies were there, cash introduced on those dates could be correlated with the additions of the earlier years. A further contention taken by counsel is that the authorities below and the Tribunal were not justified in sustaining the addition u/s 69 of the Income Tax Act and that if at all, the addition can be brought only u/s 68 of the Act.

4. Shri P. K. R. Menon, learned senior standing counsel for the Department, submits that no credit could be given for the additions made in the earlier years as there was no such claim made by the assessee before the Assessing Officer or before the Commissioner of Income Tax (Appeals) for adjusting the cash shortage with the additions made in the earlier years. Senior counsel relied on the decision of the Delhi High Court in Commissioner of Income Tax Vs. Kulwant

Kaur and Others (L.Rs. of late Gurbachan Singh), and the decision of the Supreme Court in Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh, and submitted that it is for the assessee to establish that the additions made for the earlier assessment years are available for making any investment in the business for this year. Senior counsel brought to our notice the relevant portion of the Tribunal's order and submitted that the Tribunal had clearly found that the appellant had not established the sources of the credit made in his books of account and that the findings entered by the Tribunal on this count are findings of fact from which no substantial question of law much less any question of law arises for consideration by this court in this appeal.

5. Admittedly, the appellant who is a dealer in cement had introduced the following five entries in his books :

Rs.

29-4-1988 50,000

11-5-1998 1,10,000

24-5-1988 70,000

31-5-1988 45,970

31-5-1988 6,254

6. According to the appellant, these amounts were taken from the firm, C. K. G. Agencies, Tirur, of which the appellant is the managing partner. In the above circumstances, the Assessing Officer had verified the books of account of C. K. G. Agencies and found that there were no corresponding debits on those days. The Assessing Officer also found that there were certain other entries in the books of the firm. They are as follows :

Rs.

24-5-1988 79,000

11-7-1988 50,000

31-8-1988 1,00,000

9-3-1989 55,970

Without showing date 6,254

7. Here it must be noted that neither the dates nor the amounts tally except the last figure with the entries made by the appellant in his books of account which are mentioned earlier. The Assessing Officer had summoned the appellant and a statement was taken from him on February 12, 1998. Though the Assessing Officer sought explanation with regard to the entries, the appellant did not give any satisfactory explanation. It is in those circumstances, the Assessing Officer

took the peak deficiency of cash occurred on May 23, 1988, amounting to Rs. 2,13,982.09 and observed that the appellant has utilised a minimum of unaccounted cash amounting to Rs. 2,13,982.09 during the year for his day-to-day business requirements. The explanation offered by the appellant as already noted was that the accountant of the firm had left the service and the firm had to engage a new accountant to write the accounts and that he had committed clerical mistakes. The Tribunal has clearly found that this cannot be treated as a clerical mistake. The Tribunal has considered the question as to whether the appellant had produced proof as to why the amounts were credited on various dates and held that the appellant had not discharged the burden. The Tribunal has also noted that if the appellant had the primary documents showing the debits of the amounts taken by the appellant from the firm, the day book, etc., it was for him to produce it for verification.

8. After bestowing our anxious consideration of the matter, we are not in a position to take a different view from the one taken by the authorities below and the Tribunal. The appellant could have produced the primary documents, viz., the day book, which would show the daily transactions of the firm such as receipts and payments. The appellant instead of producing the day book for establishing the source for the credits made in his books was only making attempts to prove the same by producing letters obtained from the accountant and stating that the accounts of the firm were not correctly written by the accountant. It is significant to note that the appellant was the managing partner of the firm and he had a duty to see that the day book in which the daily transactions of the firm are recorded is properly maintained and accounts are written properly on the basis of such documents. Since the appellant had not made any efforts towards that direction, it cannot be said that the appellant had satisfactorily explained the source for the credits made in the books of account.

9. Regarding the alternative contention that even assuming that the appellant had not established the source for the credits made in his books, the Assessing Officer should have taken that the said credits came out of the additions made for the earlier years which was much more than the peak credit taken by the officer for making the addition. As already noted, the appellant had not chosen to take the alternate contention before the Assessing Officer either at the time of the original assessment or before the first appellate authority in the first instance or at any rate, before the Assessing Officer while fresh assessment was made on the basis of the remand order. If, as a matter of fact, the addition made for the earlier years was available for making the credit in his books for the assessment year concerned, he should have raised the contention before the Assessing Officer so that the Assessing Officer could have considered the question as to whether those additions in fact were available with the assessee for introducing it in the subsequent years by conducting enquiries in that regard. The appellant had not raised such a claim before the Assessing Officer. In these circumstances, we are in agreement with the first appellate authority and the Tribunal that the said question cannot be considered at this stage. The decisions relied on by

counsel for the Department also support the stand taken by us. In the above circumstances there is no merit in the appeal.

10. This appeal is accordingly dismissed.