(1996) 03 KL CK 0005

In the High Court Of Kerala

Case No : O.P. No. 4392 of 1995-S

Commissioner of Income Tax — APPELLANT

Vs

Beena Rubber Works — RESPONDENT

Date of Decision : 04-03-1996

Acts Referred:
Income Tax Act, 1961 — Section 256, 68

Citation : (1997) 223 ITR 94 : (1998) 97 TAXMAN 369

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

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

Judgement

V.V. Kamat, J.—The Revenue prays for a direction for a reference of the following six questions :

" 1. Whether, on the facts and in the circumstances of the case and also in the light of the facts narrated in the enclosure to the reference application, the Tribunal is right in law and fact in holding that the order of the Commissioner of Income Tax (Appeals) in deleting the addition was just and warranted ?

2. Whether, on the facts and in the circumstances of the case and on a perusal of paragraph 4 of the order of the Commissioner of Income Tax (Appeals) which shows that the assessee''s explanation was that the deposits at Calicut were the withdrawals of partners from the assessee on earlier days, the Tribunal is right in fact and in law in holding that the explanation of the assessee that the amounts were withdrawn from bank account of the assessee on February 18, 1982, and deposited the same at Calicut on the same day was before the Assessing Officer and is not the above finding factually wrong and the order, based on baseless facts, vitiated ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that the entire amount considered by the

Assessing Officer related to the deposits on February 18, 1982 ?

4. Whether, on the facts and in the circumstances of the case and in view of the facts that there were deposits of Rs. 1,00,000 and Rs. 50,000 on February 18, 1982, out of which the Assessing Officer considered the sum of Rs. 1,00,000 as unexplained ; another sum of Rs. 50,000 considered by the Assessing Officer was the deposit dated March 1, 1982, the Tribunal is right in law and fact in holding that the entry on March 1, 1982, was only a correcting entry for February 18, 1982, ''as held by the Commissioner of Income Tax (Appeals)''--page 9--and are not the above findings of correction and the finding ''as held by the Commissioner of Income Tax (Appeals)'' wrong and against facts since the Commissioner of Income Tax (Appeals) did not enter such a finding ?

5. Whether, on the facts and in the circumstances of the case and in view of the facts that the letter of the assessee quoted by the Tribunal at pages 8 and 9 would show that the assessee actually made the correction entry during the year ended on March 31, 1984, is not the order of the Tribunal wrong, based on wrong facts and hence, vitiated ?

6. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding -

(i) these withdrawals are evidenced by entries in the bank accounts of the respective parties supported by confirmatory letters and these two withdrawals were withdrawals for making remittance into the State Bank of Mysore, Calicut, on the same day ?

(ii) therefore, it cannot be said that the assessee had offered a new explanation ?"

2. Having seen the three orders as well as the impugned order of the Income Tax Appellate Tribunal rejecting the application of the Department praying for a reference, holding that the Tribunal has entered a concurrent finding that the deposits stood explained and there was only a clerical mistake in making entries in the books of account which too was subsequently rectified and, therefore, there is no error of any kind, we are not inclined to take any other view than the one taken by the Appellate Tribunal refusing to find any substance in the reference application. The necessary factual matrix would show that the assessment year is 1982-83 of a registered-firm doing business in centrifuging latex. The Income Tax Officer noticed that in the accounts of the assessee with the State Bank of Mysore, Calicut Branch, there were two credit entries of Rs. 50,000 and Rs. 1,00,000, respectively, dated March 1, 1982, and February 18, 1982. However, in the books of account there was only one credit of the sum of Rs. 50,000. The Income Tax Officer held that the sum of Rs. 1.50 lakhs stood unexplained and, therefore, he brought to tax the amount as income u/s 68 of the Income Tax Act.

3. However, the first appellate authority (Commissioner of Income Tax (Appeals))

considered the contention of the assessee to the effect that two amounts of Rs. 50,000 each happened to be withdrawn from the assessee''s accounts with the Canara Bank, Perinthalmanna, and Perinthalmanna Service Co-operative Bank Ltd., Pang, by cheque dated February 18, 1982. The cash was taken to Calicut by one of the partners of the assessee-firm and came to be deposited on the same day in the State Bank of Mysore, Calicut. Accepting this explanation, the first appellate authority deleted the addition of Rs. 1 lakh holding that the credit of Rs. 50,000 said to have been received on two loan accounts, one of Rs. 30,000 from West Coast Rubber Products, Calicut, and the other Rs. 20,000 from Mrs. Sulekha Veerankutty.

4. The second appellate authority (the Income Tax Appellate Tribunal) also accepted the same explanation by observing that the amounts were withdrawn from their bank account on February 18, 1982, and the said amount came to be deposited on the same day at Calicut. This was in the nature of a correcting entry which was made on March 1, 1982.

5. The Department''s counsel had a quarrel with regard to the factual aspect as to whether these aspects were already on record and were present with the Assessing Officer. Learned counsel took us through the impugned order of the Tribunal as the second appellate authority, especially paragraph 7 onwards of the said order.

6. Reading the order of the second appellate authority, it would be found that the Tribunal has spread over the factual matrix relating to the grievance of deletion of addition of Rs. 1,50,000. It is observed in regard thereto that in the account of the assessee with the State Bank of Mysore, Calicut, there were two credits of Rs. 50,000 and Rs. 1,00,000, dated February 18, 1982. However, in the ledger of the assessee credit was shown only as far as the sum of Rs. 50,000 leading to the consequential conclusion that the sum of Rs. 1 lakh stood unexplained. It is then observed that an entry dated March 1, 1982, was noticed showing credit of Rs. 50,000 in the account of the assessee in the name of Sri K. C. Rasheed and it was also held to be unexplained leading to the addition by resort to the provisions of Section 68 of the Act.

7. The aspect has been considered in detail and in regard thereto it will have to be observed that the explanation would be found in the material of the record which, if read, affords reasonable and satisfactory explanation in the process of correction. The Tribunal has also considered the detailed reasoning of the first appellate authority. Thereafter, in paragraph 8 of the order, the particulars of the material on record in regard to the question have been referred to and quoted wherever necessary and it is observed that the explanations of the assessee regarding the credits standing in the name of Sri K. A. Rasheed on March 1, 1982, were already present in the material before the Income Tax Officer. It is observed that the Income Tax Officer himself had noticed that the partners, Sri K. A. Rasheed and Sri K. C. Ahammed, had withdrawn considerable amounts from the firm and, therefore, the explanation of the assessee that they have

withdrawn the money from the bank account was known to the Income Tax Officer and in fact when he was making an addition of Rs. 1 lakh, he was aware of the withdrawals of the partners on earlier dates.

8. The Department''s learned counsel has a grievance with regard to this aspect. It may be that reading the order of the Income Tax Officer, it may not be spelt out as regards his knowledge. However, it cannot be disputed that all these aspects were present and staring in the face of the record, What was required was only to read the consequences of these entries which afforded the required satisfaction by way of explanation.

9. Be that as it may, we do not think that any interference is called for with regard to the conclusion as found concurrent by the two appellate authorities needing any reference as sought by the Revenue in this petition. The petition accordingly stands dismissed.

