
(1996) 07 KL CK 0061

In the High Court Of Kerala

Case No : Income Tax R. No. 91 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Bhadra Enterprises (No. 2)

RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1997) 228 ITR 717

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; C. Kochunni Nair, Firoz and Dale P. Kurien, for the Respondent

Judgement

V.V. Kamat, J.—Our answer to the following two questions is available from the bare reading of the impugned order of the Income Tax Appellate Tribunal, Cochin Bench, because the Tribunal has obviously misread, nay, not read, paragraph 10 of the order of the Income Tax Officer, and also the careful and cautious reasoning of the said officer affirmed by the first appellate authority ;

1. Whether, on the facts and in the circumstances of the case, was the Tribunal justified in law in finding that the Income Tax Officer did not reject the books of assessee ?

2. Whether, on the facts and in the circumstances of the case, was the Tribunal right in finding that the income of Rs. 1,12,906 determined by the Income Tax Officer in the first instance has only to be taken as the reasonable business income of the assessee for this assessment year ?

2. The assessee is concerned with the assessment year 1979-80. He conducted, five arrack shops and four toddy shops and in regard thereto returned a total income of Rs. 68,350 which is in response to a notice u/s 148 of the Income Tax Act, 1961, dated March 25, 1981, the return having been filed on March 9, 1983.

3. In paragraph 3 of the order, the following particulars from the return are

available :

Rs.

Income from T. S. No. : 1

7,111.35

Income from T. S. No. : 32

20,510.10

Income from T. S. No. : 33

7,403.50

35,024.95

Less : Loss in T. S. No. 5

990.05

Net income from toddy shops :

34,034.90

Income from arrack shops in Kuttanad Range

34,315.17

68,350.07.

4. The profit from the arrack shops is returned on the basis of the trading and profit and loss account and cash book and ledger. It is observed that there are no vouchers for most of the expenses claimed. It is further observed that the duplicate (carbon copies) of sale bills are not also available. The officer has also carefully pointed out that the salaries claimed to have been paid to the employees, besides being unvouched and incapable of cross verification for want of full addresses of the employees, are also much in excess as compared to the employees usually working in this business. In the process of further reasoning, the officer observed that the assessee's business income would have to be determined as hereunder:

Rs.

Net profit as returned

68,350

Add : Disallowance in salary and rent

10,000

In sundry expenses

5,000

In interest account

29,556

1,12,906.

5. In this process, discussing the factual matrix in great detail, the officer has observed particularly in paragraph 10 (page 7) that there is a strong case for rejecting the accounts filed by the assessee and to estimate the total income. Thereafter in paragraph 11 of the order the officer has taken into consideration that for the subsequent accounting year ending on March 31, 1980, a total income of Rs. 2,43,626 is shown by the assessee after filing to its bankers a profit and loss account in regard thereto. It is observed that this situation is, in spite of the position that whereas in the said year the assessee had only one arrack shop compared to his having five arrack shops during the year under assessment. Noticing this situation, the Income Tax Officer records that on a proper inference the income for the assessment year in question should have been more at least something than in the assessment year 1980-81.

6. Even then the Income Tax Officer estimated the assessee's income for the year in question at Rs. 2 lakhs. The assessment was completed issuing directions necessary as a result thereof.

7. The first appellate authority--the Commissioner of Income Tax (Appeals), Trivandrum, has again considered the position and has observed that recomputation of the income at Rs. 1,12,906 is reached and it is after this exercise when it is found that the assessee himself had shown an income of Rs. 2,43,626 for the immediately succeeding assessment year in question, the earlier computation would be patently inadequate and these justifiably prompted the officer to estimate the income at Rs. 2 lakhs.

8. The first appellate authority has also additionally stated the comparative position. It is stated that during the assessment year in question (1979-80) 1,30,480 litres of arrack was sold as against 55,711 litres sold during the subsequent year (1980-81) and even then the income of Rs. 2,43,626 was shown. With these additional aspects the first appellate authority also confirmed the estimation of income at Rs. 2 lakhs for the assessment year in question as not unreasonable or excessive in any manner.

9. It is the Tribunal that has committed the error obviously. In paragraph 6 of the impugned order of the Tribunal, it is observed as follows :

The Income Tax Officer himself determined the income of the assessee's business at Rs. 1,12,906 after making certain disallowances. This would mean that the Income Tax Officer did not reject the books of account but made certain disallowances of expenses because of the absence of vouchers, etc. Again in the course of the assessment order at paragraph 10, he stated that there is a strong case for rejecting the accounts and estimating the total income. He, therefore, estimated the assessee's business income at Rs. 2,00,000 based upon the profit

and loss account of the assessee for the succeeding year filed before its bankers. While arriving at the estimate of Rs. 2,00,000, he has not brought on record any material as to the location of the shop that was bid in the succeeding year and the amount of the kist in the succeeding year for that one shop and the conditions of business, etc., that existed in the year for the purpose of comparison with this year. Simply because the assessee had shown higher income for one shop, in the next year the Income Tax Officer cannot make an estimate of Rs. 2,00,000 for this year simply basing on the number of shops. In fact he himself, at one place in the assessment order, did not reject the books of account but only made certain disallowances in the expenses claimed on the ground of absence of vouchers and the nonavailability of the duplicate of sale bills.

10. We have seen that the Income Tax Officer, after rejecting the books of account has proceeded to consider the situation in regard to which by way of computation he had already estimated the total income at Rs. 1,12,906, taken up for reconsideration thereafter. We have already pointed out factors taken into consideration not only by the Income Tax Officer but also by the first appellate authority. The submission of the assessee was that such a pent up amount of Rs. 2,43,626 in spite of the situation being worse than that of the assessment year in question was filed for bank purposes. It will have to be observed that this was also taken into consideration by the Income Tax Officer and that is why the Income Tax Officer fixed the estimated income at Rs. 2 lakhs based on the return of the next assessment year (1980-81).

11. The real error of law committed by the Tribunal is the observation that the Income Tax Officer did not reject the books of account but made certain disallowance of expenses because of the absence of vouchers, etc.

12. We have pinpointed the findings of the Income Tax Officer in paragraph 10 of the order and in that context the above observations of the Tribunal would have to be categorised as ignoring the material or much less misleading the material and if this court dealing with the proceedings of reference u/s 256 of the Income Tax Act, 1961, comes across such a situation, it is an occasion for interference in regard thereto. The Tribunal is not justified in setting aside the two concurrent orders and to adopt the figure of Rs. 1,12,906 by way of substitution. For the above reasons, we answer question No. 1 in the negative, in favour of the Revenue and against the assessee. We also answer question No. 2 in the negative, in favour of the Revenue, in terms of the orders of the first two authorities and against the assessee.

13. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench for passing consequential orders.