

(1994) 11 KL CK 0023

In the High Court Of Kerala

Case No : Original Petition No's. 7282, 12168 and 12169 of 1991, 216 and 14251 of 1992, 12790, 13297 and 16632 of 1993, 14909 of 1993-S and 738 and 998 of 1994 along with Income Tax Reference No's. 187, 188, 193, 197 and 200 of 1988

Commissioner of Income Tax

APPELLANT

Vs

K. Mahim

RESPONDENT

Date of Decision : 05-11-1994

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 3, 4
Income Tax Act, 1961 — Section 22, 256
Wealth Tax Act, 1957 — Section 27(3)

Citation : (1995) 123 CTR 93 : (1995) 213 ITR 820

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.K. Usha, J

Bench : Division Bench

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

Judgement

T.L. Viswanatha Iyer, J.—All these cases relate to the assessments made on one K. Mahim, either under the Income Tax Act, 1961, or under the Wealth-tax Act, 1957. The references which are u/s 256(2) of the Income Tax Act, 1961, relate to the assessment years 1972-73, 1974-75, 1975-76 and 1980-81. For, the year 1972-73, there are two references, Income Tax Reference No. 193 of 1988 at the instance of the assessee, and Income Tax Reference No. 200, of 1988, at the instance of the Revenue. The Tribunal followed its order for the year 1972-73 for the subsequent years and this has given rise to the three references Income Tax References Nos. 197, 187 and 188 of 1988 for the years 1974-75, 1975-76 and 1980-81. Similar orders were passed in relation to the reopened assessment for 1972-73 and the assessments for 1973-74, 1976-77 to 1979-80 and 1981-82 to 1983-84. The order for 1972-73 also formed the basis of the decision in respect of the wealth-tax assessments on the assessee for the years 1976-77 and 1977-78. These orders have given rise to the original petitions to compel reference of certain questions of law arising out of the orders of the Tribunal, of

which Original Petitions. Nos. 7282 of 1991 and 216 of 1992 relate to the wealth-tax assessments and the others to the Income Tax assessments. We shall deal with Income Tax References Nos. 193 and 200 of 1988 in the first instance, as the proceedings for 1972-73 form the basis of assessment for all the subsequent years.

2. 1972-73 : An addition of Rs. 88,000 was made to the income returned by the assessee as income from undisclosed sources on the ground that he had not explained the source of investment for the purchase of a property in Mangalore under three documents in the names of three persons, K. Abdul Rahiman and K. Abdulla Kunhi, both of Udma village to which the assessee belongs, and K. P. Abdullah of Kara Village. The assessee appears to be a person who indulges in smuggling of contraband articles. He is a partner of a firm Kallatra Mahin and Co., Mangalore, of which, inter alia, one Mohammed Sali is a partner. The property aforesaid in Mangalore was purchased in the names of the three persons, the expenses for the purchases including the land value and the registration charges, aggregating to Rs. 44,000 in the case of Abdul Rahiman, Rs. 22,000 in the case of K. Abdulla Kunhi and Rs. 22,000 in the case of K. P. Abdulla. The Assessing Officer felt serious doubt about the purchases, which according to him must have been made by the assessee in the names of these three persons. He made enquiries and on the basis of the various circumstances and facts stated in the order of assessment, the Income Tax Officer came to the conclusion that the property had been purchased by the assessee in the names of the three persons aforesaid. Accordingly, he called upon the assessee to explain the source of the investment. The explanation was not satisfactory, the assessee contending that the properties belonged to the three named persons. Being not satisfied with the explanation, the Income Tax Officer made an addition of Rs. 88,000 to the income returned by the assessee while completing the assessment for the year 1972-73.

3. On December 31, 1971, a large quantity of foreign fabrics and metallic yarn worth Rs. 19,52,190 was seized by the customs authorities on the sea side in Manki Village, Hbnavar Taluk from two lorries MYX 7985 and MYG 4219. The first of these lorries was driven by one K. M. Ahammed alias Ahammed Kunhi, who was the owner of the other lorry, which was being driven by one N. A. Aboobacker. The goods were under transport to Bangalore from Manki Village, being concealed under fish manure bags. Both the drivers deposed to the circumstances in which the transport was taking place. The goods were seized by the customs authorities and subsequently confiscated. A fine was imposed on the assessee for indulging in smuggling activities in violation of the Customs Act. The levy of the fine was confirmed in appeal by the Central Board of Revenue. The Income Tax Officer called upon the assessee to explain his source of funds for the investment of Rs. 19,52,190. The explanation was found not satisfactory. An addition of this amount was, therefore, made to the income returned for the year 1972-73, as income from undisclosed sources.

4. The assessee had purchased a property for Rs. 1,82,000 for which he alleged he had taken loans, inter alia, from two persons, P. M. Mohammed Kunhi and M. Hassainar, of Rs. 10,000 each. The Income Tax Officer did not accept these credits as genuine and added this amount, amongst others, to the assessee's income under the head "Other sources".

5. The assessee challenged these additions amongst others in appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner called for a remand report from the Income Tax Officer with opportunity to the assessee to cross-examine certain persons as also to put him on notice of various pieces of evidence relied on. The Appellate Assistant Commissioner thereafter passed the order confirming the additions made of Rs. 88,000 and Rs. 19,52,190 mentioned earlier, but deleting the addition of Rs. 20,000 obtained from P. M. Mohammed Kunhi and M. Hassainar. The Revenue appealed to the Tribunal against this deletion and the assessee appealed on the confirmation of the other two additions. The Tribunal held that the Revenue had not established the benami nature of the transactions of purchase of the Mangalore property and, therefore, the addition of Rs. 88,000 on this ground was unjustified. The Tribunal also held that there was no material to connect the import of the contraband articles with the assessee and, therefore, the amount of Rs. 19,52,190 could not be added to the assessee's taxable income. In the Departmental appeal the Tribunal came to the conclusion that there was nothing to show that the two creditors mentioned by the assessee had sufficient resources to make advance to the assessee. The Tribunal, therefore, reversed the finding of the Appellate Assistant Commissioner and restored the addition of Rs. 20,000 made by the Income Tax Officer.

6. Income Tax Reference No. 193 of 1988 at the instance of the assessee challenges the finding of the Tribunal in relation to the addition of Rs. 20,000 mentioned above. Income Tax Reference No. 200 of 1988 at the instance of the Revenue relates to the alleged investment made by the assessee in the purchase of the Mangalore property for Rs. 88,000 as also the addition made in respect of the contraband articles of Rs. 19,52,190.

7. In the subsequent years 1973-74 onwards assessments under the Income Tax Act were completed adding an amount of Rs. 15,000 every year to the returned income, as the income from the property at Mangalore, which according to the assessing authority belonged to the assessee. Such additions were made for all the years up to and inclusive of 1983-84 of which the assessments for 1974-75, 1975-76 and 1980-81 form the subject-matter of Income Tax References Nos. 197, 187 and 188 of 1988 consequent on orders passed u/s 256(2) by this court. In respect of the other years the Appellate Tribunal has refused to make a reference and Original Petitions Nos. 12168 of 1991, 14251 of 1992, 12790, 13297, 14909 and 16632 of 1993, 738 and 998 of 1994 have been filed u/s 256(2) of the Act to compel reference of the question relating to the addition of Rs. 15,000 in each year to the assessee's income.

8. The assessment for 1972-73 was subsequently reopened to make an addition in respect of the expenses alleged to have been incurred by the assessee for putting up a compound wall in the Mangalore property on an estimated cost of Rs. 60,000. The Income Tax Officer eventually made an addition of Rs. 40,000 under this head. The Appellate Assistant Commissioner set aside this order in view of the earlier order of the Tribunal relating to the very same year, wherein the Tribunal had held that the benami nature of the transactions had not been established. The Tribunal affirmed the Appellate Assistant Commissioner's view because of its earlier decision. Original Petition No. 12169 of 1991 is filed to compel reference of the question of law arising out of this order of the Tribunal.

9. The assessee was also subject to assessments under the Wealth-tax Act for the years 1976-77 and 1977-78. For these years the value of the Mangalore property assessed at Rs. 1,48,000 as also the value of the contraband articles of Rs. 19,52,190 were added to the assessee's wealth. These additions were deleted by the Commissioner (Appeals) following the decision of the Tribunal in the Income Tax appeal relating to the year 1972-73. The order of the Commissioner was affirmed by the Tribunal and the Commissioner has sought reference of the questions arising therefrom which are similar to the ones raised in the Income Tax matters for the opinion of this court u/s 27(3) of the Wealth-tax Act. Those applications are Original Petitions Nos. 7282 of 1991 and 216 of 1992.

10. In Income Tax Reference No. 193 of 1988, the question referred is whether the Tribunal was justified in restoring the addition of Rs. 20,000 deleted by the Appellate Assistant Commissioner. The Income Tax Officer held that the source of this cash credit has not been satisfactorily explained and thus made the addition along with another amount of Rs. 9,000 stated to have been obtained from one Kolikara Abdullakunhi. The Appellate Assistant Commissioner noted that the two persons who were stated to have advanced the amount of Rs. 20,000, namely, Mohammed Kunhi and Hassainar, were sailors who had given confirmatory letters in respect of the amounts lent to the assessee. According to the Appellate Assistant Commissioner, it was common knowledge that several persons in Kasaragode area go abroad as sailors in merchant ships and earn considerable amounts of salary and allowances. He did not, therefore, find any difficulty in accepting that these two sailors would have given loans of Rs. 10,000 each to the assessee. It was accordingly that he deleted the addition of this amount. The Tribunal did not, however, accept this plea. They held that the mere fact that confirmation letters were filed was not sufficient since there was nothing to show that these two persons had been earning large sums from their occupation as sailors. The Tribunal also noted that there was nothing to show that they would have saved anything out of their earnings. In effect the finding of the Tribunal was that there was no material to show that these two persons had necessary resources to make an advance of Rs. 10,000 each to the assessee. Having gone through the materials in the case we do not find any reason to disturb this finding of the Tribunal. Apart from the confirmatory letters no other evidence was

produced by the assessee on whom the burden lay to establish that these two persons were men of means or that they had sufficient resources with them to make advances to the assessee. The Tribunal has held against the assessee for want of such material to show that these persons did have the resources to make the advances. We are in agreement with the Tribunal that there is no material in the case to establish the capacity of the alleged creditors to advance the amounts in question to the assessee. Being essentially a question of fact on which the Tribunal has rendered a decision on the materials available, we do not find our way to interfere with the decision of the Tribunal. The question referred in Income Tax Reference No. 193 of 1988 has, therefore, to be answered in favour of the Revenue and against the assessee. We do so.

11. We shall now take up the question relating to the addition of Rs. 19,52,190 which forms the subject of one of the questions referred in Income Tax Reference No. 200 of 1988. We have already mentioned the circumstances in which this addition was made by the Income Tax Officer. The Appellate Assistant Commissioner also concurred with him. Statements had been recorded from the drivers of the two lorries at the time of the seizure. The statement of one of those drivers, namely, K. M. Ahammed alias Ahammed Kunhi has been extracted in the orders of the Income Tax Officer as also of the Tribunal. He has detailed the circumstances in which he and N. A. Aboobacker took the lorries to Manki Village so as to transport these smuggled goods to Bangalore. The assessee and one Mohammed Kunhi who is an associate and relative of the assessee met him at the designated petrol bunk at about 5 p.m. on December 30, 1971. They promised to remunerate the drivers suitably for the work to be done by them, which they were told was to load some smuggled goods at the seashore at Manki and take them to Bangalore covered with fish manure bags. The drivers were told that the delivery note for the transport will be given in the name of one M. M. Abdul Khader, a fish merchant of Mangalore, who was also an associate of the assessee and whom the deponent Ahammed alias Ahammed Kunhi had seen several times talking and moving closely with the assessee. It was in the light of these categorical statements made by the two drivers that the Income Tax Officer came to the conclusion that the smuggled goods belonged to the assessee.

12. Before the Appellate Assistant Commissioner an opportunity was sought to cross-examine the witnesses whose statements were relied on by the Income Tax Officer. When the drivers were re-examined what they did was to retract what they had stated earlier. The Income Tax Officer reported accordingly in his remand report dated February 8, 1977, adding that the subsequent statements of the drivers were made with the sole motive of helping the assessee. The Appellate Assistant Commissioner examined the matter over again and came to the same conclusion as the assessing authority.

13. This concurrent finding was upset by the Tribunal. The Tribunal noted, inter alia, that the statement extracted, of the driver K. M. Ahammed alias Ahammed

Kunhi, indicated that the assessee had some connection with the goods at least to the extent of making arrangements for the transport of these goods. The Tribunal also did not accept the retraction of the statements of the two drivers holding that the original statements were entitled to weight rather than the subsequent statements. In fact the Tribunal discounted the theory of the drivers that they made the original statements under coercion by the customs authorities. The Tribunal nevertheless held that even going by the original statements of the drivers, there was nothing to connect the assessee with the smuggled items. According to the Tribunal, the statements made by two drivers clearly refuted the case that the assessee was the owner of the goods. The Tribunal accordingly directed deletion of Rs. 19,52,190 from the assessment.

14. We do not think that this question has been dealt with properly by the Tribunal. The Tribunal has chosen to extract only the statement given by one of the two drivers, K. M. Ahammed alias Ahammed Kunhi. The contents of the statement made by the other driver, N. A. Aboobacker, has not been scrutinised or appraised at all, apart from a bare general reference to it. The Tribunal itself has noted that the statement of Ahammed alias Ahammed Kunhi indicated some connection between the assessee and the smuggled goods. The Tribunal has not analysed the evidence of the two drivers as also the other materials before arriving at the conclusion that there was nothing to indicate that the assessee was the owner of the goods. The fact that the assessee and his associate Mohammed Kunhi had made arrangements for the transport of the smuggled goods from Manki Village to Bangalore agreeing to bear the expenses thereof cannot be disputed in the light of the original statements made by the drivers, which has been accepted by the Tribunal. In that event, the Tribunal should have enquired why these two persons had associated themselves with the transport, if really the assessee was not the owner of the goods. The Tribunal should have examined the evidence of both the drivers instead of resting content with looking into the evidence of one of the drivers and ignoring the other apart from a bare general reference to it. We are not in a position to ascertain as to what the other driver has stated as the statement of the driver, N. A. Aboobacker, has not been annexed to the statement of the case. The Tribunal should have examined the circumstances of the case to ascertain whether the assessee was the owner of the goods. It must be noted that it may not be possible in the case of such smuggled articles to pinpoint the ownership with tangible documents. The matter has to be decided on the facts and circumstances disclosed by the materials in the case. The Tribunal has omitted to make an appraisal of the facts and circumstances in this fashion in the alleged absence of a statement in the driver's deposition about the assessee's ownership of the goods.

15. A more important factor which has been totally overlooked by the Tribunal is the fact that the customs authorities had imposed a fine on the assessee for violation of the provisions of the Customs Act in relation to the goods in question. The imposition of the fine was confirmed in the appeal by the Central Board of Revenue. Such a statutory action by the functionaries under the

Customs Act is entitled to weight though it is not binding or conclusive on the Income Tax authorities. The Tribunal should have considered the evidentiary value of this statutory action under the Customs Act and decided whether that should also be taken into account in deciding whether the assessee was the owner of the goods in question. That has not been done. It is for these reasons that we are unable to hold that there has been a satisfactory appraisal of the materials available in the case by the Tribunal to hold whether the goods in question belonged to the assessee or not. The matter requires fresh consideration about the assessee's ownership with reference to all the materials available and also the circumstances of the case. Since the matter has not been properly dealt with, we decline to answer questions Nos. 2 and 3 referred to us in Income Tax Reference No. 200 of 1988 with a direction to the Tribunal to reconsider the matter in accordance with law and in the light of the observations contained in this judgment.

16. We shall now come to the other question which looms large in all the references other than Income Tax Reference No. 193 of 1988 as also in the original petitions, namely, about the investment alleged to have been made by the assessee in the Mangalore property and the addition of income therefrom to the assessee's taxable income.

17. The Income Tax Officer has held that the purchase of the property by the assessee was with his own funds, though the deeds of purchase stood in the names of three persons mentioned earlier. He rendered this finding based on various facts and circumstances gathered by him on enquiry. This was affirmed by the Appellate Assistant Commissioner. But the Tribunal accepted the contention of the assessee that the Revenue on whom the burden lay to establish the benami nature of the transactions has failed to establish it. In support of this conclusion, the Tribunal stated that the Revenue had failed to establish that the consideration for the transfer proceeded from the assessee. It also held that though the municipal tax was paid by the assessee, that will not establish that he was the real owner of the property. So also it ignored the fact of installation of the telephone in the building, as according to it, the assessee has explained it as referable to one of his employees taking the building on rent. Execution of the deed of sale for 13 cents was explained as done by the assessee as power of attorney. The Tribunal then said that taking the cumulative effect of all these aspects it cannot be said that the Revenue has shown that the assessee is the real owner of the property. A perusal of the Tribunal's order shows that the Tribunal has not applied its mind to the various facts and circumstances which appear on the record with reference to the property in question. We may mention those facts and circumstances here.

18. The property purchased under the three documents which lay contiguously were, soon after the purchase, enclosed by a compound wall constructed at a cost of Rs. 60,000 spent by the assessee. The licence for the construction was obtained in the name of the assessee. The Appellate Assistant Commissioner has

noted that the property stands registered in the name of the assessee in the municipal records. "Two of the partners of the firm Kallatra Mahin and Co., namely, K. M. Abdul Rahiman (stated to be the assessee's son) and Mohammed Sali were residing in a building in the property with five employees, and they were in possession of the entire property. A telephone was installed in the building in the name of the assessee. All the formalities for the purchase, like purchase of the stamp papers, presentation of the documents for registration, payment of the consideration for the transactions, were done by one A. Sudhakaran, a document writer, who was an aide of the assessee. But it was significantly admitted by the purchasers when they were examined that they did not even know his name. The source of information about the availability of the property for purchase was Mohammed Sali, a partner of Kallatra Mahin and Co. The purchasers had no idea about the improvements effected in the property after the purchase, something which was unnatural if they were the real purchasers. The assessee was paying the municipal tax for the building in the property. Thirteen cents out of 19 1/2 cents purchased by K. P. Abdulla were sold about a year and a half later for Rs. 20,000, the document being executed by the assessee as power of attorney holder of Abdulla. The three purchasers were all agriculturists who, according to the Income Tax Officer, (on the basis of the materials gathered by him) did not have the wherewithal to invest such large amounts for purchase of property in Mangalore. It was also unlikely that these three agriculturists from a remote villages near Kanhangad would have joined together and purchased urban properties in Mangalore.

19. The question whether an ostensible owner is the real owner of the property or whether it is held benami for another person has to be considered on a conspectus of all the facts and circumstances of the case. No doubt, the onus of establishing that the transaction is benami is on the person asserting the benami nature of the transaction. The source whence the consideration came is a crucial test in deciding this question. But that is not conclusive of the issue. It may not always be possible for the person asserting the benami nature to establish that the consideration did proceed from another person. When it is not possible to obtain evidence which conclusively establishes the source of consideration the case must be dealt with on reasonable probabilities and legal inferences arising from proved or admitted facts. Various factors come into the reckoning of this question. The court or the authority concerned has to apply its mind to the various materials and the evidence available in the case and reach a conclusion objectively as to whether it is a case of benami transaction, where the ostensible owner is not the real owner. That is what the Income Tax Officer attempted to do by relying on various circumstances. But the Tribunal has just picked up one or two items for holding that it is not a benami transaction. According to us, the fact that the municipal records stand in the name of the assessee as found by the Appellate Assistant Commissioner or that he is paying municipal tax is a material consideration. The Tribunal is not justified in stating that this will not establish that the assessee was the real owner of the property, especially when he has no

explanation as to why the municipal records stand in his name or as to why he was paying the municipal tax. About the telephone it must be noted that the finding rendered by the first two authorities was that the assessee's son and a partner of Kallatra Mahin and Co. along with five of his employees are staying in the building. But why the telephone is in the name of the assessee is not explained by him. No doubt, the execution of the deed of sale for 13 cents is explainable as one done by a power of attorney. The Tribunal has not, however, chosen to advert or to apply its mind or to consider any of the numerous factors appearing in the case, particularly the improbability alleged of the three villagers acquiring a property in urban Mangalore area or about their inability to find resources for the purchase. These and other materials detailed by the Income Tax Officer and which are set out earlier require consideration after an application of the mind by the Tribunal. What the Tribunal has evidently done is to pick up two or three aspects and proceed as if failure to trace the source of consideration to the assessee was by itself fatal to the case of the Revenue. Since the matter has not been properly dealt with, with reference to the available materials and record, we feel that the matter requires a remit to the Tribunal for fresh consideration. We, therefore, decline to answer the first question referred in Income Tax Reference No. 200 of 1988 and the questions referred in the other references and direct the Appellate Tribunal to deal with the matter afresh in accordance with law and in the light of the observations contained in this judgment.

20. A preliminary objection was raised by Sri S. A. Nagendran, senior counsel, appearing for the assessee, that the question of real ownership of the Mangalore property was outside the purview of Consideration in view of the provisions contained in the Benami Transactions (Prohibition) Act 45 of 1988. According to him, no plea of benami can be entertained or considered after the enactment of this Act even for tax purposes. We find ourselves unable to accept this contention. The relevant sections of the Act are Sections 3 and 4. Section 3 prohibits a person from entering into any benami transaction except purchase of property in the name of his wife or unmarried daughter. The section further imposes punishment on a person entering into benami transactions. Section 4, which is the one mainly relied on, provides firstly that no suit, claim or action to enforce any right in respect of a property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of the person claiming to be the real owner of the property. Secondly, the section provides that no defence based on any right in respect of any property held benami, against the person in whose name the property is held or against any other person, shall lie in any suit, claim or action by or on behalf of the person claiming to be the real owner. What this section interdicts is the setting up of a claim of benami in any suit, claim or action between the person claiming to be the real owner of the property and the benamidars. A proceeding for the purpose of assessment to Income Tax in which the question of benami arises is not of such a nature. What the Income Tax Officer primarily seeks to establish is

not the benami nature of the transaction, but the source of the investment for the purchase of the property, whether it proceeded from the assessee or the persons in whose name the property is held. Being so, the prohibitions contained in Sections 3 and 4 of the Act do not affect the consideration of this question including the question of benami which incidentally arises. The enquiry being mainly about whether the source of the investment was made by the assessee, the benami character of the acquisition of the property is only subsidiary, and any finding thereon is only incidental, so long as the source of funds is the assessee. This is apart from the fact that Sections 3 and 4 do not bar such an enquiry in an Income Tax assessment.

21. This is so far as the investment of Rs. 88,000 is concerned. Even in relation to the subsequent years, the real basis of the addition of Rs. 15,000 as income from the property is that the assessee had received it, and, therefore, it was liable to be assessed in his hands. None of the provisions of the Benami Transactions (Prohibition) Act bars the addition of such income received by the assessee. The preliminary point raised by Sri Nagendran has, therefore, only to be overruled.

22. We may, however, mention that we are not expressing any opinion on the impact of the Act in relation to wealth-tax assessments as the only point for consideration in the two petitions relating to wealth-tax is whether a referable question of law arises. The question regarding wealth-tax is, therefore, left open.

23. This will dispose of the references. So far as the original petitions are concerned, the Tribunal has based its orders on the earlier order for the year 1972-73 which we are remitting back to the Tribunal. Therefore, the question of law raised in all these cases including the one relating to the revised assessment for 1972-73 has to be referred u/s 256(2). The question of law thus arising will be whether the Tribunal was justified in deleting the addition of Rs. 40,000 from the revised assessment for the year 1972-73 and of Rs. 15,000 from the assessments for each of the subsequent years. So far as the wealth-tax assessments are concerned, the questions sought are referable and there will be a direction accordingly.

24. We dispose of the references and the original petitions as follows :

(a) The question referred in Income Tax Reference No. 193 of 1988 is answered against the assessee and in favour of the Revenue.

(b) We decline to answer the questions referred in Income Tax References Nos. 187, 188, 197 and 200 of 1988 and direct the Appellate Tribunal to deal with the matter afresh in accordance with law and in the light of the observations contained hereinabove.

(c) In Original Petitions Nos. 12168 and 12169 of 1991, 13251 of 1992, 12790, 13297, 14909 and 16632 of 1993 and 738 and 998 of 1994, the Income Tax Appellate Tribunal, Cochin Bench, is directed to state a case and, refer the

following question of law for the determination of this court u/s 256(2) of the Income Tax Act, 1961, namely :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in deleting the addition of Rs. 40,000 relating to the improvement of the Mangalore property, in the year 1972-73, and the addition of Rs. 15,000 for the years 1973-74, 1976-77 to 1979-80 and 1981-82 to 1983-84 as the income from the said property ?"

25. In Original Petitions Nos. 7282 of 1991 and 216 of 1992 relating to the wealth-tax assessments for the years 1976-77 and 1977-78, the Tribunal shall state a case and refer the following question of law for the decision of this court u/s 27(3) of the Wealth-tax Act, 1957 :

" Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in deleting --

(i) the addition of Rs. 1,48,000 being the value of the Mangalore property ;

(ii) the addition of Rs. 19,52,190 being the value of the contraband goods seized by the customs authorities ?"

26. Communicate a copy of this judgment under the seal of this court and the signature of the Registrar to the Income Tax Appellate Tribunal, Cochin Bench, for information.