

(1997) 12 KL CK 0017

In the High Court Of Kerala

Case No : Income-tax Reference No's. 108 and 109 of 1995

Commissioner of Income Tax

APPELLANT

Vs

K.P. Baburaj

RESPONDENT

Date of Decision : 04-12-1997

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(1), 139(8), 143(3), 147

Citation : (1998) 234 ITR 718

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

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; Party in person, for the Respondent

Judgement

P.A. Mohammed, J.—These two Income Tax references u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), are coming up for decision at the instance of the Revenue. The questions of law referred to us for decision are as follows :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in deleting the levy of interest u/s 139(8) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case and having found that P.A. Abdul Muthalif Rowther Vs. Income Tax Officer, "A" Ward, and Commissioner of Income Tax Vs. Gayathri Women Welfare Association, are in support of the Revenue's contention and also in the light of the observation of the Full Bench of the Kerala High Court in Lally Jacob v. ITO [1992] 197 ITR 459 (first paragraph) wherein the Full Bench distinguished COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., and found the same inapplicable to a similar case under consideration, the Tribunal is justified in relying on COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., and is not such an approach by the Tribunal an affront to the High Court and the conclusion highly strange and strained ?

3. Whether, on the facts and in the circumstances of the case and the scope of "regular assessment" being wider in scope, ambit, taking within its sweep both types of reassessments (in the light of decisions) is not the legislation introduced with effect from April 1, 1985, one to limit and confine to reassessment for the first time and not to bring in for the first time reassessment within its scope of regular assessment and is not the understanding of the intention of the Legislature by the Tribunal wrong and unreasonable ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in deleting the levy of interest u/s 217 of the Income Tax Act, 1961 ?"

2. Out of the above, questions Nos. 1 and 4 are only relevant and remaining two questions in substance contain arguments.

3. The facts leading to these references are shortly summarised thus : The assessee did not file the return of income u/s 139(8) of the Act within the statutory period for the assessment years 1982-83 and 1983-84. In view of this default, the Assessing Officer initiated proceedings u/s 143(3) read with Section 147(a). The officer further levied interest under Sections 139(8) and 217 for the aforesaid years. As against these orders, appeals were filed and the Deputy Commissioner of Income Tax (Appeals) held that no interest can be charged under Sections 139(8) and 217 and directed the assessing authority to delete the interest charged under Sections 139(8) and 217. On second appeal the Tribunal upheld the findings of the Deputy Commissioner of Income Tax (Appeals). It held that even the first assessment made u/s 147 of the Act cannot be construed as a "regular assessment" and that prior to April 1, 1985, the expression "regular assessment" could not take within its sweep an assessment made for the first time even though u/s 147. The Revenue being aggrieved by the findings of the Tribunal filed the reference applications. That is how these references are coming before us for answer.

4. The Tribunal relied on the following decisions in support of its conclusions ;

1. COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., .

2. Charles D'souza Vs. Commissioner of Income Tax, Karnataka-II, .

3. CIT v. Padma Timber Depot [1988] 169 ITR 646.

5. Section 139(8) and Section 217 authorise levy of interest on "regular assessment". The interest has to be calculated on the basis of the amount of tax payable on the total income as determined on regular assessment u/s 139(8). u/s 217 interest is payable where on making a regular assessment, the Assessing Officer finds that the assessee has not sent a statement of advance tax or estimate in lieu of such statement. In such cases the interest that could be levied is from the first day of the assessment year to the date of regular assessment. These provisions envisage a situation where there is no regular assessment, the

quantification of interest is redundant. The question is whether such a construction is justified in view of the legislative purpose of the aforesaid provisions.

6. The term "regular assessment" has been defined in Section 2(40) of the Act as assessment made u/s 143 or 144. The Division Bench of the Karnataka High Court in Charles D'souza Vs. Commissioner of Income Tax, Karnataka-II, interpreted this provision and said (page 702) : "it would be beyond the jurisdiction of any court to give it a wider and comprehensive meaning so as to include all assessments done under the Act whether u/s 143/144 or completed after issue of notice u/s 148." In this view of the matter, the Division Bench answered the question against the Revenue holding that no interest u/s 139(8) and Section 217 of the Act is leviable in a case of an assessment or reassessment made u/s 147 of the Act. A similar view was taken by the Division Bench of the Andhra Pradesh High Court in CIT v. Padma Timber Depot [1988] 169 ITR 646 and it held that since the assessment was made u/s 143(3) read with Section 147 it was not a regular assessment and the levy of interest under Sections 139(8) and 217 was not valid. The Tribunal has placed reliance on the Full Bench decision of this court in COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., .

7. Learned senior standing counsel for the Revenue, however, contended that the above Full Bench decision in COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., is clearly distinguishable. He further adds that the propositions laid down by a later Full Bench of this court in Lally Jacob Vs. Income Tax Officer and Others, would apply in the present case. It is pointed out that the later Full Bench has distinguished the earlier Full Bench in COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., thus (page 454) :

"It was pointed out that there is an observation in a Full Bench decision of this court in COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., to the effect that an assessment or reassessment u/s 147 is not a regular assessment."

8. The Full Bench also dissented from the decisions of the Karnataka High Court in Charles D'souza Vs. Commissioner of Income Tax, Karnataka-II, and the Andhra Pradesh High Court in CIT v. Padma Timber Depot [1988] 169 ITR 646 referred to above. What is laid down by the Full Bench is that any assessment made for the first time by resort to Section 147 will also be a regular assessment for the purpose of invoking Section 217 of the Act.

9. The standing counsel for the Revenue also submitted that the decision of the Division Bench of this court in P.A. Abdul Muthalif Rowther Vs. Income Tax Officer, "A" Ward, is still holding the field up till date and the principle laid down therein would squarely apply in the facts of this case. Particular reliance is placed by counsel on the following passage contained in the said judgment (page 698) :

"It should be remembered that reassessment proceedings under Sections 147 and 148 of the Act are started because the income has escaped assessment for reasons which may range--as was put in a decision of this court--from "the stupidity of the officer to the cupidity of the assessee". These may well befall long after the period of time contemplated by Section 139 and the various sub-clauses and provisos thereto. To read Section 148 as rendering action u/s 139 impossible in such circumstances, would be destructive of the very object and purpose of the reassessment proceedings sanctioned by the section. What Section 148 enacts is to treat the reassessment proceedings as assessment proceedings and proceed accordingly u/s 139 and other provisions of the Act. So understood, we are unable to accept the argument of the counsel for the petitioner. We, therefore, hold that the levy of interest under the impugned assessment orders under the provisions of Section 139 was justified and proper."

10. In substance, the Division Bench in the above decision made the provisions contained in Sections 148 and 139 more effective and avoided an interpretation to Section 148 as rendering action u/s 139 impossible. What is propounded by this court is a purposive interpretation.

11. In view of the discussion hereinabove, we are of the view that the Tribunal is not justified in law in deleting the levy of interest under Sections 139(8) and 217 of the Act. In the result, the questions of law Nos. 1 and 4 are answered in the negative, that is to say, in favour of the Revenue and against the assessee. We decline to answer questions Nos. 2 and 3 for the reasons recorded above.

12. 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.