(1990) 09 KL CK 0017

In the High Court Of Kerala

Case No : Income-tax Reference No. 122 of 1987

Commissioner of Income Tax APPELLANT

Vs

K.U. Mathai RESPONDENT

Date of Decision : 19-09-1990

Acts Referred:
Income Tax Act, 1961 — Section 16

Citation : (1991) 191 ITR 480

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

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

Judgement

K.S. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law for the decision of this court:

"Whether, on the facts and circumstances of the case, was the Tribunal correct in directing that the assessee should be assessed on the real income, viz., after considering the expenses incurred for earning the income ?"

The respondent is an assessee to Income Tax. He was the manager of the Spices Division of Vishwa Niryat Pvt. Ltd., Cochin, who were dealing in hill produce. Besides salary and bonus, the assessee was given commission at the rate of 5% on the net profit that accrued to the company arising out of the trade in such spices dealt with by the assessee. The assessee pleaded that he received such commission as per the terms and conditions of the employment letter dated November 5, 1976, and November 19, 1976, that he had to incur expenditure in connection with canvassing, organising and market report performance, etc., of spices to any agent or assistants engaged by him and so out of the total amount of Rs. 40,550 commission received during the year, his real or net income was only Rs. 11,924. Even this was disclosed only in a revised return. The Income Tax Officer held that the commission received by the assessee was part of the salary and is includible in the income assessable to tax. Regarding the deduction, the Income Tax Officer held that the assessee is entitled only to the standard deduction u/s 16(1) of the Act. In the appeal, the Appellate Assistant Commissioner held that the assessee can be assessed only on the real income and the net commission earned by the assessee was Rs. 11,924 and it should be assessed under the head "Other sources". The Income Tax Officer was directed to modify the assessment accordingly. The Revenue filed an appeal before the Income Tax Appellate Tribunal and prayed for restoring the order passed by the Income Tax Officer, The Income Tax Appellate Tribunal disposed of the appeal, by order dated April 25, 1986 ; it purported to follow its earlier decision in K.I. Kuriakose''s case (I. T. A, Nos. 79 and 80 (Coch) of 1983 and 92 and 93 (Coch) of 1983) and holding that the facts and circumstances of the present case are similar to the facts and circumstances in the case of K. I. Kuriakose, stated that the gross amount of commission should be reduced by the expenditure incurred by the assessee for earning the same and only the balance of Rs. 11,924 should be assessed under the head "Salary". It is thereafter at the instance of the Revenue, that the question of law formulated hereinabove has been referred for the decision of this court.

2. We heard counsel. The decision in the case of K. I, Kuriakose, referred to by the Appellate Tribunal, came to this court along with a series of other cases and they are I. T. R. Nos. 560 to 563 of 1985 and I. T. R. Nos. 90 to 93 of 1986--Commissioner of Income Tax Vs. Varghese Mathew and K.I. Kuriakose, . The said cases were disposed of by a Bench of this court by a common judgment dated October 12, 1989. This court found that the Appellate Tribunal had referred to innumerable decisions of various Tribunals, some of them conflicting in nature, before arriving at a conclusion. But, none of the decisions rendered by the various Benches of the Tribunal were available in the paper book, nor made available before us. It was further found, in the earlier cases, that the order of the Appellate Tribunal suffers from a fundamental infirmity, in that the question as to whether the assessee''s claim for deduction is allowable depends upon the nature of the income received by the assessee. This court posed the question as to whether the incentive bonus received in that case by the assessees formed part of their salary or is it outside the salary income, as a fundamental question to be adjudicated in the case. The contract of employment by which the salary and other amounts are payable to the assessee does not form part of the paper book. The assessee himself claimed that he received the commission as per the terms and conditions of the employment letters dated November 5, 1976, and November 19, 1976. But, these letters do not form part of the paper book. Why and for what reason and on what basis was the commission paid to the assessee is not clear. Only if a finding is rendered on that crucial aspect, the further question as to whether the assessee is entitled to any deduction for earning the said commission will arise for consideration. On these and other aspects, we are of the view that the Appellate Tribunal has totally failed to apply its mind to the crucial question that arose for consideration in this case. As the ultimate fact-finding authority, the Tribunal should have applied its mind to the various aspects

that are germane to the enquiry instead of simply stating that the facts and circumstances of the present case are similar to the facts and circumstances in the case of K. I. Kuriakose.

3. The order of the Appellate Tribunal is laconic and there are no positive or clear findings regarding the nature -of the receipt of commission by the assessee, the legal basis under which the commission was received, the total amount received by the assessee and other aspects pertaining to his employment. So, in the circumstances disclosed in this case, we are unable to answer the question referred to this court precisely or satisfactorily.

4. We decline to answer the question referred to this court; at the same time, we direct the Appellate Tribunal to restore the appeal to file and dispose of the matter in the light of the observations contained in the decision of this court in I. T. R. Nos. 560 to 563 of 1985 and I. T. R. Nos. 90 to 93 of 1986--CIT v. Varghese Mathew [19901 190 ITR 356.

5. The reference is disposed of as above.

6. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.