(2003) 03 KL CK 0039

In the High Court Of Kerala

Case No : Income-tax Reference No. 49 of 1999

Commissioner of Income Tax APPELLANT

Vs

M.M. Thomas RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:
Income Tax Act, 1961 — Section 132, 158BB, 158BB(1)

Citation : (2004) 187 CTR 78 : (2004) 265 ITR 327

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K.R. Menon and George K. George, for the Appellant; None, for the Respondent

Judgement

G. Sivarajan, J.—The Income Tax Appellate Tribunal, Cochin Bench, has referred the following question of law to this court u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), at the instance of the Commissioner of Income Tax, Calicut:

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the income below the taxable limit of any previous year is not to be included as the undisclosed income of the block period for the purpose of Section 158BC, even though such income has not been declared by the assessee by filing the return of the income ?"

2. Though notice was served on the respondent-assessee, there is no appearance.

3. Today, when the matter came up for hearing, learned Central Government standing counsel appearing for the applicant, submits that the question referred is covered by the decision of this court in Commissioner of Income Tax Vs. Purshottam Das Govind Das, , in favour of the Revenue. Standing counsel, however, submitted that the effect of the said judgment has been nullified by virtue of the amendment to the provisions of Section 158BB(1)(c)(B) of the Act, which says :

"(B) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period."

4. By virtue of the amendment, which was made with retrospective effect, from July 1, 1995, in a case where the undisclosed income of any year covered by the block period is below the taxable limit, the said income has to be excluded from the block assessment.

5. In the instant case, the search u/s 132 of the Act was conducted on November 22, 1995, that is after the retrospective amendment of Sub-clause (B) of Clause (c) of Sub-section (1) of Section 158BB of the Act, and consequently, we do not find any illegality in the conclusion reached by the Tribunal. We accordingly answer the question referred in the affirmative, that is, in favour of the assessee and against the Revenue.

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, as required by law.

