(1996) 10 KL CK 0037

In the High Court Of Kerala

Case No : Income-tax Reference No. 49 of 1993

Commissioner of Income Tax APPELLANT

Vs

N. Krishnan RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1998) 233 ITR 646

Hon'ble Judges : V.V. Kamat, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; C. Kochunni Nair, for the Respondent

Judgement

V.V. Kamat, J.—The following two questions expect our answer :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that once reassessment proceedings have resulted in reassessment of the income of the assessee, the original assessment order can no longer survive ?

2. Whether, on the facts and in the circumstances of the case and in the light of the observation of the Supreme Court in Commissioner of Income Tax, Lucknow Vs. M/s. Onkar Saran and Sons, , ''it is only the determination of the correct total income for the assessment year in question that is being redone'' and in the light of the first illustration (at page 8) resulting in the conclusion, ''that certainly cannot be the effect of the legal provisions'', are not the order of the Tribunal and the decisions of the Kerala and Bombay High Courts, relied on, against the decision of the Supreme Court in Commissioner of Income Tax, Lucknow Vs. M/s. Onkar Saran and Sons, ?"

2. The Income Tax Appellate Tribunal, with regard to the question as to whether the reassessment proceedings would wipe out the original assessment order, relied on the decision of the apex court in Commissioner of Income Tax, Lucknow Vs. M/s. Onkar Saran and Sons, and reached the conclusion accordingly.

3. The Revenue has brought the above questions before us contending that the subsequent decision in Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., of the apex court, considering the situation, reached the conclusion that the reassessment does not result in the wiping out of the original assessment. Learned senior tax counsel submits that the decision in CIT v. Sun Engineering Works P. Ltd. [1992] 198 ITR-297 being a later decision, should Rule the situation. However, we will consider both the decisions.

4. Firstly, in Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , it is observed that in a proceeding u/s 147 of the Act, items of income which had escaped assessment other than or in addition to the item or items which led to the issuance of a notice u/s 148 and where reassessment made was u/s 147 regarding escapement of tax, the Income Tax Officer''s jurisdiction is confined only to such income which has escaped tax or has been under assessed and does not extend to revising, reopening or reconsidering the whole assessment or permitting the assessee to reagitate the question which had been decided in the original assessment proceedings. It is further observed in the context that it is only the under assessment that gets set aside and not the entire assessment when reassessment proceedings are initiated. It is further clarified that the officer cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject-matter of proceedings u/s 147 of the Act. The assessee also cannot resist reassessment proceedings validly initiated merely by showing that other income which had been assessed originally was too high. In this context, the apex court has considered the importance of the words "such income" to mean clearly the income which is chargeable to tax but has escaped assessment. The Income Tax Officer''s jurisdiction gets confined thereto only to such income. It certainly does not extend to situations that are concluded by the earlier assessment.

5. On reading even the earlier decision of the apex court in Commissioner of Income Tax, Lucknow Vs. M/s. Onkar Saran and Sons, , especially the portion appearing at page 8 of the report which has been carved out in question No. 2, it would have to be said that when the original assessment proceedings have been finalised and reassessment proceedings have been initiated to assess escaped income, it is observed, it is only the determination of the correct total income for the assessment year in question that is being redone. In the process of reasoning, in the context, the apex court has also referred to its earlier decision in V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh, . The apex court has emphasised the purpose of reassessment proceedings. However, in the light of the subsequent decision, the questions get neatly answered.

6. For the above reasons, we answer question No, 1 in the negative, in favour of the Revenue and against the assessee. We answer question No.2 in the affirmative, in favour of the Revenue and against the assessee.

7. A copy of this judgment under the seal of the court and the signature of the

Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.