(1991) 01 KL CK 0041

In the High Court Of Kerala

Case No : Income-tax Reference No. 138 of 1988

Commissioner of Income Tax APPELLANT

Vs

O.T. Alexander RESPONDENT

Date of Decision : 24-01-1991

Acts Referred:
Income Tax Act, 1961 — Section 263

Citation : (1991) 191 ITR 30

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

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; P. Balachandran, 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 in the circumstances of the case, the assessee is entitled to the deduction of the provision for the payment of purchase tax ?"

2. The respondent, an individual, is an assessee under the Income Tax Act. We are concerned with the assessment year 1981-82. Annexure-A assessment order dated September 13, 1984, for the year 1981-82, sent along with the statement of the case, shows that the accounting period ended on December 31, 1980. So, the previous year for the assessment year 1981-82 should be January 1, 1980 to December 31, 1980. The assessee pleaded that he is entitled to make a provision in the sum of Rs. 3,21,256 towards purchase tax liability for the year. It was allowed by the Income Tax Officer. In proceedings u/s 263 of the Income Tax Act (suo motu revision) by the Commissioner of Income Tax it was noticed that a provisional sales tax assessment order was passed on June 26, 1979, by the Sales Tax Officer requiring the assessee to pay purchase tax. It is seen that this order was affirmed in appeal by the Appellate Assistant Commissioner (Sales Tax), by order dated November 6, 1979. It is for the said liability that arose or accrued as a result of the above provisional assessment order that the assessee

claimed that he is entitled to make a provision in the sum of Rs. 3,21,256. The Commissioner of Income Tax, Cochin, in his revisional order u/s 263 of the Act dated October 23, 1986, found that, in the final assessment order passed in 1983, the sales tax authorities had held that the assessee is entitled to exemption u/s 5(3) of the Central Sales Tax Act and so, as. per the final assessment order for the year, no liability for purchase tax even arose and so the provision made in the sum of Rs. 3,21,256 for which credit was given by the Income Tax Officer should be added back to the income. The Income Tax Officer was directed to recompute the tax on this basis. The assessee carried the matter by way of appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal held that the sales tax authorities, by the provisional assessment order dated June 26, 1979, held that the assessee is liable to pay purchase tax in respect of sea foods purchased for the purpose of export. It was confirmed by the Appellate Assistant Commissioner, by order dated November 6, 1979. So, at the end of the accounting year, namely, December 31, 1980, the liability to pay purchase tax was quantified and demanded from the assessee. The liability to pay purchase tax existed during the relevant accounting year. The said liability to pay purchase tax was wiped out only by the final assessment order passed on August 10, 1983. But, the fact that the assessee was held liable to pay purchase tax as per the provisional order of assessment cannot be ignored and it cannot be said that no purchase tax was payable by the assessee for the purchases effected during the relevant accounting year, and so the direction given by the Commissioner of Income Tax to add back a sum of Rs. 3,21,256, the provision made towards purchase tax liability, in the income assessed, is a clear error. The Tribunal allowed the appeal filed by the assessee. 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.

3. We heard counsel for the Revenue, Mr. P. K. R. Menon, as also counsel for the respondent/assessee, Mr. P. Balachandran. As stated, we are concerned with the assessment year 1981-82. The order of assessment, for the year 1981-82, sent to this court by the Income Tax Appellate Tribunal is annexure ''A'' dated September 13, 1984. That order shows that the accounting period for the assessment year 1981-82 ended on December 31, 1980. If so, the accounting period should be January 1, 1980, to December 31, 1980. On this basis, even if there was a provisional order of assessment against the assessee, in the order dated June 26, 1979, affirmed in appeal by appellate order dated November 6, 1979, by no stretch of imagination, can it be said that the liability related to the accounting period ended on December 31, 1980. On the basis of the assessment order dated September 13, 1984, sent to this court by the Income Tax Appellate Tribunal, the liability of the assessee to pay purchase tax arose in the previous assessment year 1980-81, for which the accounting period ended on December 31, 1979. On this basis, it was not open to the assessee to claim that a provision for purchase tax liability can he made in the year 1981-82. This crucial and factual position has not been noticed, either by the Commissioner of Income Tax,

when he passed the order dated October 23, 1986, (annexure-B) or by the Income Tax Appellate Tribunal when it rendered its appellate order dated June 23, 1987 (annexure-C). All along the line, both parties have proceeded on the basis that the liability to pay purchase tax which resulted as a result of the order passed by the Sales Tax Officer dated June 26, 1979, and affirmed by the Appellate Assistant Commissioner (Sales Tax) by order dated November 6, 1979, related to the assessment year 1981-82. That will be so only if the accounting period for the said assessment year 1981-82 took within its fold the period between June and November, 1979. It is not so as could be seen from annexure-A assessment order dated September 13, 1984. Counsel for the assessee Mr. Balachandran has a case that the assessment order sent to this court is not a proper or relevant assessment order, as the assessee had more businesses than one and it was not anybody''s case that the liability that accrued to the assessee to pay purchase tax as a result of the provisional order of assessment dated June 26, 1979, and affirmed by the Appellate Assistant Commissioner by order dated November 6, 1979, was outside the period relevant to the assessment year 1981-82. But, that is the basic and vital aspect around which the entire controversy has been projected in this court, from the available papers sent to this court by the Appellate Tribunal, along with the statement of the case.

4. In this state of affairs, we are not in a position to answer the question referred to this court, either satisfactorily or properly. We decline to answer the question of law formulated by the Appellate Tribunal and as stated hereinabove for the decision of this court. While declining to answer the question referred to this court, we direct the Income Tax Appellate Tribunal to restore I. T. A. No. 1161 (Coch) of 1986, the appeal filed by the assessee, for the assessment, year 1981-82 to file and consider the matter afresh on the basis of the relevant records and other facts brought to its notice. We are not adjudicating the question on merits, since it was not found necessary due to the non-advertence to the basic and relevant fact which is essential for claiming deduction for the assessment year 1981-82. It is for the Appellate Tribunal to traverse the entire grounds on merits when the appeal is heard again.

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.

