

(1996) 03 KL CK 0011

In the High Court Of Kerala

Case No : Original Petition No's. 3468 and 12497 of 1995-S

Commissioner of Income Tax

APPELLANT

Vs

P.K. Narayanan

RESPONDENT

Date of Decision : 14-03-1996

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 271(1)

Citation : (1996) 135 CTR 388 : (1997) 223 ITR 169

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; G. Sarangan and E.R. Venkiteswaran, for the Respondent

Judgement

V.V. Kamat, J.—These are two petitions for the assessment years 1979-80 and 1980-81, respectively, brought before us by the Revenue u/s 256(2) of the Income Tax Act, 1961.

2. With the help of learned senior counsel for the Revenue we have been taken through not only all the three orders in the quantum proceedings, but also, equally well, equal number of orders in the present proceedings arising u/s 271(1)(c) of the Act relating to the question of penalty.

3. Although the Revenue has framed as many as 12 questions in Original Petition No. 3468 of 1995, since we are impressed only with two of them along with the aid of the third one from us, it would be an unnecessary burden on this judgment to reproduce all the 12 questions ad verbatim although it is customary.

4. The factual matrix barely necessary for the above purpose would show that the assessee appears to be a jack of many trades such as fishing--probably dealing in the sale of fish and not in actual fishing as such--abkari business and what not jewellery also in combination.

5. On January 29, 1982, his business and residential premises came under search u/s 132 of the Act and this led to noticing the situation which became the

basis of further proceedings although for 1979-80, on the basis of a return dated September 27, 1989, and admitted income therein of Rs. 22,940 and a further agricultural income of Rs. 3,500 ended in the completion of the assessment in regard thereto.

6. The Income Tax Officer made additions over and above the income returned by the assessee broadly under three heads : (1) under business, (2) under other sources, and (3) under property. The particulars, unnecessary for the purpose of this judgment, are to be found in the order of the Income Tax Officer (annexure "A").

7. There was an appeal before the Commissioner of Income Tax (Appeals) and the judgment (annexure "B" to the petition) shows that with regard to income from toddy business at Alwaye, 50 per cent of the addition made by the Income Tax Officer and the entire addition made under the head "Other sources" were confirmed.

8. Naturally both the assessee as well as the Department approached the Appellate Tribunal and the Tribunal sustained the following additions :

Rs.

"Income from toddy business in Alwaye Range

2,27,609

Income from benami business in the name of Archana Jewellery

20,580

Share income of minor children from Shilpi Movies

13,333

Addition to income from let out property

1,505

Notional income from dwelling house

800

2,63,827."

9. The present penalty proceedings u/s 271(1)(c) of the Income Tax Act were already initiated for alleged concealment of income. By the order (annexure-"D") for the year 1979-80, penalty of Rs. 1,10,000 was levied by the Income Tax Officer. For the assessment year 1980-81 (subject-matter of the companion petition) penalty of Rs. 1,70,000 was levied on the basis of the order in the said petition.

10. This order also in turn became the subject-matter of appeal before the first appellate authority-Commissioner of Income Tax (Appeals). The penalty order of

the officer was confirmed in both the appeals in both these petitions.

11. The proceedings was taken up before the Appellate Tribunal and both the appeals came to be allowed cancelling the penalty levied by the Income Tax Officer as confirmed by the first appellate authority.

12. The application of the Revenue u/s 256(1) of the Act was rejected by the order dated May 27, 1994, leaving the Revenue to approach this court by these petitions.

13. We have heard learned senior counsel for the Department as well as the learned senior counsel Sri Sarangan for the assessee, after being taken through the entire material on record.

14. It is clear that apart from the situation that the quantum proceedings appear to have received finality, in penalty proceedings also the trial authority as well as the first appellate authority have sustained not only the liability of the assessee to penalty u/s 271(1)(c) of the Act, but also with regard to the amount of penalty referred to above in regard thereto.

15. The Tribunal has considered the situation in the above background by judgment dated September 21, 1994. On going through the judgment and critical as we are about the notions of fairness that any observations on the merits in regard to the questions asked for would not have its own weight, we would only like to observe in the limited sense of the term that on several aspects especially connected with the application of Explanation 1 to Section 271(1)(c) of the Income Tax Act, 1961, would be required to be considered not only in isolation, but also with special reference to application to the factual matrix, since we found that in regard thereto the burden cast on the Revenue appears to be the trumpet song of the judgment. We will have to consider this question with reference to items in the light of inter-play of the legal effect of the provisions of the Explanation. In our judgment, the following three questions would require a probe and consequent reference :

" 1. Whether, on the facts and in the circumstances of the case and also in the light of Explanation 1 to Section 271(1)(c), relied on by the assessing authority, the Tribunal is right in law and fact in casting the burden of proof on the Revenue ?

2. Whether, on the facts and circumstances of the case, the Tribunal is right in law in deleting the penalty levied in relation to alleged income from : (a) toddy shop, (b) Shilpy Theatres, (c) Archana Jewellery, and (d) minors" income, by proper application of law of onus and burden of proof and its discharge ?

3. Whether, on the facts and in the circumstances of the case, is not the order of the Tribunal vitiated for not considering the case in the light of Explanation 1 to Section 271(1)(c) ?"

16. Accordingly, u/s 256(2) of the Income Tax Act, 1961, we direct that the

Appellate Tribunal should state the case in detail taking into consideration the facts and circumstances on record and the impugned judgment of the Appellate Tribunal as well as the material on record and thereafter refer the three questions to this court within a period of three months from receipt of the record.

17. Before parting with this judgment our experience compels us to make certain observations of a general character. Preparation of the statement of case happens to be considered as an empty formality in spite of the legal position in regard thereto. The parties before the Appellate Tribunal do not appear to be participating in the preparation of the statement of case in spite of the position of law that it is very difficult for this court on reference to travel beyond the statement of case. Going through the record, we feel that this case is a proper occasion to make these observations of a general character for expression of a hope that the Revenue, more particularly since it is the petitioner, as well as the assessee since he is at the suffering end are expected to be at their best in the preparation of the statement of case because, according to the rules, the statement of case is prepared after reference of a copy thereof to both the parties which has been looked at as an empty formality all these years. Order accordingly.