
(1994) 11 KL CK 0040

In the High Court Of Kerala

Case No : Original Petition No. 1323 of 1994-S

Commissioner of Income Tax

APPELLANT

Vs

Popular Kuries Ltd.

RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 256

Citation : (1995) 214 ITR 38

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

Bench : Division Bench

Advocate : N.R.K. Nair, for the Appellant; P.G.K. Wariyar and M.K. Kesavan, for the Respondent

Judgement

K. Sreedharan, J.—This is a petition u/s 256(2) of the Income Tax Act, 1961. The assessment year is 1982-83. The assessee is a public limited company engaged in the business of conducting kuries. The original assessment was completed on September 9, 1982. Subsequently, a notice u/s 148 of the Income Tax Act was issued to the assessee on March 27, 1985. According to the Income Tax Officer, an amount of dividend payable as per the balance-sheet as on December 31, 1981, in a sum of Rs. 63,29,335 included dividends on forfeited tickets and dividends forgone by defaulted prized or bid ticket holders. The officer took the view that forfeited dividends were never distributed among the subscribers on termination of kuries. The forfeited dividends thus became part of the assets of the company. The Income Tax Officer brought to tax a sum of Rs. 1,24,812 as income of the year. The officer considered the balance amount of Rs. 5,56,188 as liable to be included in the total income in view of Section 41(1) of the Income Tax Act, as the amount of dividend payable has ceased to be a liability in the absence of any claimants. Accordingly, he passed annexure "A" assessment order. The assessee took up the matter in appeal without success. In second appeal, the Tribunal held against the departmental action taken by the Income Tax Officer for reassessment. Thereupon the Department filed an application u/s 256(1) of the Act before the Appellate Tribunal to refer the following questions to

this court :

"1. Whether, on the facts and in the circumstances of the case :--

(i) the Tribunal is right in law and fact in holding that the reassessment u/s 147(b) is bad in law as it amounted to change of opinion on the same set of facts and circumstances ;

(ii) are not the findings of "change of opinion", "on the same set of facts and circumstances" wrong, baseless and against law, facts and circumstances ;

(iii)" the Tribunal is right in law and fact in holding : "thus the materials relevant for the assessment were before the Income Tax Officer and the assessment was completed only after scrutiny of the amounts and are not the above findings wrong, baseless, unreasonable and unsupported by materials ;

(iv) the word/view "thus" above has any nexus with the preceding sentence/view ;

(v) and considering the contents of the audit report (not extracted in the order) the decision of the Supreme Court in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, has application to the facts of the case ?

2. Whether, on the facts and in the circumstances of the case and on an interpretation of Section 41(1) of the Income Tax Act read with Motilal Ambaidas v. CIT [1977] 108 ITR 136 and Commissioner of Income Tax Vs. Marikar (Motors) Ltd., , the Tribunal is right in law in holding that in the absence of a case being made out that any deduction was allowed in respect of Rs. 5,56,600 and Rs. 71,623, the addition of the amounts cannot be justified u/s 41(1) of the Income Tax Act ?

3. Whether, on the facts and in the circumstances of the case :

(i) could not the additions of Rs. 5,56,600 and Rs. 71,623 be sustained u/s 28(iv) ?

(ii) the Tribunal is right in law and fact in taking into consideration the treatment of the two sums by the assessee ;

(iii) the Tribunal is right in law and fact in accepting the contention that these amounts were in the nature of liabilities until final settlement was made ?

(iv) the Tribunal is right in law and fact in holding that the two sums "cannot be treated as its income for the impugned assessment year", "no benefit had accrued to the assessee in the relevant previous year in respect of these sums . . ."?"

2. The Tribunal by its order dated June 22, 1993, rejected that application. Hence this original petition.

3. The Income Tax Officer passed the final order of assessment in relation to the assessment year 1982-83 on September 9, 1982. The income was determined at Rs. 3,84,163. Original assessment was completed after discussion with the chartered accountant who represented the assessee. All materials relevant for the assessment were placed before the Income Tax Officer and the assessment was completed after scrutiny of the entire records u/s 143(3) of the Act. Thereafter reassessment proceedings were initiated at the instance of the audit. Such reassessment is not warranted as per Section 147(b) of the Act. In support of this view, reliance was placed by the Tribunal in the decision in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, . Assessment was made by the Income Tax Officer taking a different view on the same set of facts. That cannot be considered as an opening of the assessment on the emergence of a new set of facts and circumstances. In this view, the Tribunal is correct. We do not find any referable question of law on the order of the Tribunal. There is no merit in this original petition. The original petition is accordingly dismissed.