
(1997) 07 KL CK 0022

In the High Court Of Kerala

Case No : Income-tax Reference No. 2 of 1994

Commissioner of Income Tax

APPELLANT

Vs

P.P. Khader Haji

RESPONDENT

Date of Decision : 04-07-1997

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 144, 147, 148, 254

Citation : (1998) 234 ITR 461

Hon'ble Judges : K.K. Usha, J;K.A. Mohamed Shafi, J

Bench : Division Bench

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

Judgement

K.K. Usha, J.—This reference is at the instance of the Commissioner of Income Tax, Cochin. It arises out of the order passed by the Income Tax Appellate Tribunal, Cochin Bench, in I. T. A. No. 19 (Coch of 1987). The relevant assessment year is 1982-83. The following are the questions referred for opinion of this court :

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

(a) the Tribunal is justified in cancelling the assessment ?

(b) the Tribunal is right in deleting the addition without further enquiry ?

2. Whether, on the facts and in the circumstances of the case, should not the Tribunal have remitted the case to the officer for a de novo consideration ?"

2. The assessee is a non-resident. During the previous year relevant to the assessment year 1982-83, the assessee had purchased certain immovable properties for a consideration of Rs. 4,76,000. The Income Tax Officer initiated proceedings u/s 147 of the Income Tax Act, 1961. Since the assessee did not comply with the notice u/s 148, the Income Tax Officer issued notice u/s 142(1) twice. Since there was no response from the assessee, the Income Tax Officer

issued a letter giving out the information in his possession regarding the purchase of properties and proposing to complete the assessment ex parte estimating the income of Rs. 6,00,000. Since there was no response to this letter also, the Income Tax Officer completed the assessment u/s 144 estimating the income at Rs. 6,00,000. On appeal, the Commissioner of Income Tax (Appeals) confirmed the order of the Income Tax Officer.

3. The assessee filed a second appeal before the Tribunal. Before the Tribunal, the assessee contended that under the notice dated January 2, 1985, referred to in the assessment order, the assessee was never required to explain the sources of the investment and there was no reference to the sources of the assessee for his personal expenditure. It was also contended that for the assessment year 1981-82, the assessee has been assessed to wealth-tax in the status of a non-resident on a net wealth of Rs. 20,00,000. The Tribunal took the view that the assessment was dearly arbitrary and cannot be sustained. According to the Tribunal, there was no material on record to connect the investments with any unexplained source of funds of the assessee. It also held that "in the face of the fact that the assessee has been assessed to wealth-tax the assessment lacks any material with reference to the undisclosed personal expenditure for which any income could be sustained". The Tribunal, therefore, annulled the assessment.

4. Learned standing counsel for the applicant contended that the Tribunal has committed an error in annulling the assessment. Relying on a decision of the Supreme Court in Commissioner of Income Tax, Mysore Vs. Segu Buchiah Setty, , learned counsel submitted that the Income Tax Officer was fully justified in proceeding with the ex parte assessment when the assessee failed to submit the return. Alternatively, he contended that even if the Tribunal was of the view that the Commissioner of Income Tax should have taken into consideration the contention raised by the assessee in his appeal relying on the wealth-tax assessment for the year 1981-82 and the wealth-tax return filed by him for the year 1982-83, the Tribunal should have set aside the order passed by the first appellate authority and remitted the matter to the assessing authority for fresh consideration. The Tribunal should not have directly annulled the assessment.

5. Learned counsel for the assessee submitted that the assessee had placed before the first appellate authority itself materials regarding his wealth-tax assessment for the year 1981-82 and the wealth-tax return filed for the year 1982-83. The assessee had also contended that his power of attorney holder had responded to various notices and he had filed a reply on August 24, 1984, requesting for one month's time. A copy of the letter referred to above is annexure-D, In the above letter, the power of attorney holder has stated that the assessee was out of India and he was expected only in the month of October, 1984. Since the full details were not furnished to the power of attorney holder, he requested for time till October 31, 1984, to file the returns. It was submitted by learned counsel for the assessee that apart from the wealth-tax return the assessee had subsequently filed the Income Tax returns also.

6. Under these circumstances, according to learned counsel, the assessment order where the assessee had been treated as a resident is not sustainable under law. Therefore, the Tribunal was fully justified in annulling the assessment order.

7. After hearing both sides we are of the view that the Tribunal should not have annulled the assessment as such. It should have set aside the order passed by the first appellate authority and remitted the matter to the assessing authority for fresh consideration. We, therefore, answer question No. 1(a) in the negative, in favour of the Revenue and against the assessee. Question No. 1(b) is answered in the negative, in favour of the Revenue and against the assessee. Question No. 2 is also answered in the affirmative, in favour of the Revenue and against the assessee.

8. 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.