(1996) 07 KL CK 0042

In the High Court Of Kerala

Case No : O.P. No. 14917 of 1995-S

Commissioner of Income Tax — APPELLANT

Vs

R. Bharathan (No. 1) — RESPONDENT

Date of Decision : 15-07-1996

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

Citation : (1998) 148 CTR 199 : (1998) 230 ITR 187

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; C. Kochunni Nair, M.A. Firoz and Dale P. Kurian, for the Respondent

Judgement

V.V. Kamat, J.—The Tribunal has quashed and set aside the penalty proceedings in their entirety.

2. The assessee is an abkari contractor and the assessment year is 1984-85 in regard to which a return declaring loss of Rs. 1,05,759 was filed. At the rate of Rs. 18 per litre, the assessee has accounted for sale of arrack at Rs. 45,19,550. The records seized were verified and the assessee was found to be selling arrack at the rate of Rs. 25 per litre. In addition, the bottles were not filled to their full capacity and thus an excess of 6,786 litres were admitted by the assessee.

3. On a total income of Rs. 28,35,520 making an addition of Rs. 17,98,950, the assessment was completed. This was upheld by the first appellate authority--the Commissioner of Income Tax (Appeals).

4. Needless to state, simultaneously penalty proceedings were initiated and the Income Tax Officer levied a penalty of Rs. 27,74,619 u/s 271(1)(c) of the Act.

5. The first appellate authority, relying on the order of the Tribunal, cancelled the penalty which was taken up in appeal before the Tribunal by the Revenue where the order cancelling penalty was confirmed.

6. On the facts and circumstances of the case, it will have to be considered as to whether the penalty proceedings could be justifiably cancelled in its entirety. In our judgment, the Revenue is justified in asking for a reference in this petition u/s 256(2) of the Income Tax Act, 1961.

7. We, therefore, direct the Income Tax Appellate Tribunal to prepare the necessary statement of case in detail placing not only the orders on merits, but also all orders of penalty proceedings on record in the paper book and refer the following five questions to this court as expeditiously as possible :

"1. Whether, on the facts and in the circumstances of the case, and also in the light of the relevant Explanation to Section 271(1)(c) of the Income Tax Act, the Tribunal is right in law and fact in holding that ''it has to be held that this is only a case of estimated addition and this estimated addition is not based on any concealment or suppression of sale proceeds'' and are not the above findings wrong, unreasonable and based on wrongly casting the burden on the Revenue and without adverting to the relevant Explanation ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that there is no concealment of income as stated by the Assessing Officer and is not the above finding wrong, unreasonable and without considering the relevant Explanation ?

3. Whether, on the facts and in the circumstances of the case, and also in the light of the relevant Explanation to Section 271(1)(c) and in the absence of any explanation being offered by the assessee (''the assessee did not give any explanation'') and the addition sustained in the quantum for the year, the Tribunal is right in law and fact and has materials to uphold the order of the Commissioner of Income Tax (Appeals) cancelling the penalty levied u/s 271(1)(c) of the Income Tax Act ?

4. Did the assessee discharge the burden that lay on him ?

5. Whether, on the facts and in the circumstances of the case, and also considering the admission and other circumstances, the Tribunal is right in law and fact in cancelling the penalty levied u/s 271(1)(c) in its entirety ?"

8. The original petition disposed of as above.

