

(1994) 10 KL CK 0032

In the High Court Of Kerala

Case No : Original Petition No's. 5660 and 7222 of 1992-S

Commissioner of Income Tax

APPELLANT

Vs

Vanaja Textiles Ltd.

RESPONDENT

Date of Decision : 10-10-1994

Acts Referred:

Income Tax Act, 1961 — Section 139, 142, 143, 256, 271

Citation : (1994) 10 KL CK 0032

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.K. Usha, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; B.S. Krishnan and V. Ramachandran, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—Original Petition No. 7222 of 1992 is a petition arising out of the assessment made on the respondent-assessee for the assessment year 1986-87. A return was filed on December 31, 1986, which was signed by the executive director of the respondent-company. Another return was filed on March 11, 1987. The question as to whether the return filed on December 31, 1986, was a valid return or whether it is a void one was raised for the first time in the appeal before the Income Tax Appellate Tribunal and the Tribunal held that since all the materials to decide the issue were on record and since the question was purely a question of law, they were admitting this new ground in appeal. They then dealt with the matter and came to the conclusion that the return filed on December 31, 1986, was not a valid return. They further held that Section 292B of the Income Tax Act, 1961, was not attracted to the facts of this case and was not sufficient to validate the said return. Consequent on these findings, the Tribunal held that the return filed by the assessee on March 11, 1987, was the only valid return filed by the assessee, that, therefore, the further proceedings for the completion of assessment required notices under Sections 142 and 143 of the Act which had not been issued, that the non-issue of notice under Sections 142 and 143 was an irregularity which could be cured and that opportunity must be given to the Department to regularise the assessment. It, therefore, set aside

the order of the Commissioner (Appeals) and remitted the matter back to the assessing authority to complete the assessment in accordance with law.

2. Out of this order of the Tribunal, the Revenue sought to have certain questions of law referred for the determination of this court. The petition, Original Petition No. 7222 of 1992, is filed to compel reference of those questions.

3. Penalty had also been imposed on the assessee based on the assessment referred to earlier and that was taken up in appeal to the Tribunal. Since the quantum appeal was allowed and remitted back to the assessing authority, the Tribunal held that the penalty imposed on the basis of such assessment cannot stand. The penalty was, therefore, cancelled and liberty was given to the Department to initiate penalty proceedings if found necessary. The Department sought reference of certain questions as arising out of this order and that application being dismissed, Original Petition No. 5660 of 1992 is filed to direct reference of those questions.

4. While counsel for the Department contended that questions of law arise out of the order of the Tribunal which forms the subject of Original Petition No. 7222 of 1992, counsel for the assessee contended that no such questions arise for consideration and that in any case the petition has become- infructuous and virtually an abuse of process for the reason that the order of the Tribunal had been implemented by the assessing authority by completing a fresh order of assessment on January 22, 1990. It was, therefore, submitted that no purpose will be served by directing reference of the questions sought by the Department. He also submitted that so far as the penalty matter is concerned, no question of law can be said to arise inasmuch as the Department has been given liberty to initiate fresh proceedings after the reassessment if so desired.

5. We do not propose to deal with the merits of the controversy between the parties regarding the validity or otherwise of the return dated December 31, 1986, or as to the question whether the return dated March 11, 1987, was the first valid return in the case. We are at present concerned only with the question whether any referable question of law arises out of the orders of the Income Tax Appellate Tribunal. In exercising the jurisdiction, we do not think it proper for us to deal with the merits of the case particularly when the questions raised are not covered by any direct decision on the point either of this court or of the Supreme Court. Even the decision in P.N. Sasikumar and Others Vs. Commissioner of Income Tax, , on which reliance was placed by the assessee, though no doubt, it was dealing with a case u/s 292B was not dealing with the situation in this case, so that we cannot say that there is any direct decision in favour of the assessee on the point. We are, therefore, refraining from expressing any opinion on the merits of the case or on the applicability or otherwise of the decisions relied on, so far as this case is concerned. On the submission of counsel that the petition has become infructuous and is virtually an abuse of process, we are not inclined to accept the contentions of the assessee. Evidently, the Department has not accepted the decision of the Tribunal. They applied for reference and being

defeated therein they have come forward with this application u/s 256(2). If the Department has not accepted the decision of the Tribunal, necessarily the implementation of the said order by the assessing authority pending the proceedings perhaps to obviate any plea of remit cannot be said to preclude the Department from filing this application u/s 256(2) to compel a reference of the questions of law sought therein. We overrule this contention of the assessee.

6. So far as the penalty matter is concerned, the order of the Tribunal is a consequential order to the order in the quantum appeal, so that the Department is well justified in seeking a reference of the question raised as a consequence of their petition u/s 256(2) in the quantum appeal.

7. We are, therefore, of the opinion that the following questions of law arise out of the orders of the Tribunal, which are liable to be referred to this court : We feel that they will cover all the aspects of the questions raised by the Revenue in their reference application.

8. Quantum appeal : Income Tax. Appeal No. 167/(Coch) of 1988 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the return filed on December 31, 1986, was not a valid return ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the return filed by the assessee on March 11, 1987, was the only valid return and further that the assessment required to be completed afresh for non-issue of the notices under Sections 142 and 143 of the Act ?"

9. Penalty matter : Income Tax Appeal No. 364/(Coch) of 1989 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and fact in cancelling the order of penalty ?"

10. The Tribunal shall state a case and refer the aforesaid questions of law for the decision of this court u/s 256(2) of the Income Tax Act, 1961.

11. Communicate a copy of this judgment under the seal of this court and the signature of the Registrar to the Income Tax Appellate Tribunal, Cochin Bench, for information and compliance.