(1998) 01 KL CK 0017

In the High Court Of Kerala

Case No : O.P. No. 4021 of 1997-S

Commissioner of Income Tax APPELLANT

Vs

V.I. Abraham RESPONDENT

Date of Decision : 23-01-1998

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

Citation : (1998) 148 CTR 44 : (1998) 231 ITR 668

Hon'ble Judges : Om Prakash, C.J;J.B. Koshy, J

Bench : Division Bench

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

Judgement

OM Prakash, C.J.—Heard counsel for the parties.

2. This application is made at the instance of the Revenue u/s 256(2) of the Income Tax Act, 1961. The assessment year relevant herein is 1983-84. The due date for filing the return in the case of the assessee was July 31, 1983, but the assessee filed the return on November 14, 1985. The explanation of the assessee was that the return could not be filed in time as there was delay in finalising the accounts of the firms in which he is one of the partners. The Income Tax Appellate Tribunal, on appeal, held as under :

"It is well-settled that where the accounts of the firm were not finalised the delay in filing the return by the partner will constitute reasonable cause."

3. This is how the Appellate Tribunal cancelled the penalty imposed u/s 271(1)(a) of the Act. No finding is recorded by the Appellate Tribunal whether there was sufficient cause in not finalising the accounts of the firms which delayed the submission of the return on the part of the assessee.

4. Thereupon, the Revenue made an application u/s 256(1) of the Act which too was rejected by the Appellate Tribunal reiterating that the order of the Appellate Tribunal does not give rise to any question of law in this behalf.

5. Aggrieved, the Revenue has come up u/s 256(2) requiring us to direct the Appellate Tribunal to refer the following questions :

"1. Whether, on the facts and in the circumstances of the case and in the absence of an ascertainment or a finding that there was delay in filing the accounts of the firm, the Tribunal is right in law and fact in proceeding so in reaching the conclusion of ''reasonable cause'' solely relying on the so called ''explanation'' of the assessee ?

2. Whether, on the facts and in the circumstances of the case, and in the absence of any extension of time being sought for filing the return for the so called delay for finalising the accounts of the firm, the Tribunal, solely relying on the ''explanation'' is right in law and fact in finding ''reasonable cause'' for the delay ?"

6. The question that arises from the order of the Appellate Tribunal is : whether, on the facts and in the circumstances of the case, the Tribunal was right in cancelling the penalty, even though no finding was recorded that there was sufficient cause for not finalising the accounts of the firms in which the assessee was a partner himself. This gives rise to a question of law and we, therefore, direct the Appellate Tribunal to draw up a statement of the case and refer the following question reframed by us for the opinion of this court :

"Whether, on the facts and in the circumstances of the case and in the absence of a finding that there was sufficient cause in not finalising the accounts of the firms in which the assessee himself was a partner, the Tribunal was right in cancelling the penalty imposed u/s 271(1)(a) of the Income Tax Act, 1961 ?"

7. The application is, accordingly, allowed.

