

(2001) 12 KL CK 0047

In the High Court Of Kerala

Case No : IT Ref. No. 13 of 1999 7 December 2001

Commissioner of Income Tax

APPELLANT

Vs

V.I. ABRAHAM

RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:

Income Tax Act, 1961 — Section 271

Citation : (2002) 174 CTR 388

Hon'ble Judges : S. Sankarasubban, J; C.N. Ramachandran Nair, J

Bench : Full Bench

Advocate : P.K.R. Menon George K George, for the Revenue P. Balakrishnan, for the Assessee, for the Appellant;

Judgement

C.N. Ramachandran Nair, J.

This reference arises from the penalty levied by the assessing officer u/s 271(1) (a) of the Income Tax Act for the belated filing of Income Tax return. The penalty levied was sustained in first appeal. However, the assessee filed a second appeal before the Tribunal. The Tribunal reversed the order in first appeal on the ground that the assessee had taken the stand that the delay occurred in filing the return was on account of the delay in auditing the accounts of the firm and, therefore, there was sufficient cause for the assessee for not filing the return in time. It is against this order of the Tribunal, that the revenue sought for reference and the Tribunal referred the following question of law for decision by 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 firm 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 ?

2. We have heard senior counsel for the revenue and Sri P. Balakrishnan, counsel for the assessee. Counsel for the revenue contended that burden of proof u/s 271(1)(a) was on the assessee to prove that he was prevented by sufficient

cause in not filing the return in time and that he has not discharged the same. It is further contended that there is inordinate delay in filing the return and that the Tribunal has not considered relevant facts or decided the case properly.

3. Counsel for the assessee contended that the assessee had furnished reasons for delayed furnishing of return before the assessing officer himself. Counsel also contended that the delay in filing the return was on account of the fact that the account of the firms in which he was a partner were not finalised. He has also placed reliance on a decision in Commissioner of Income Tax Vs. Maheshprasad Gupta, in support of his contention.

4. On going through the order of the Tribunal, we find that the Tribunal has just relied on the argument of the assessee without referring to the facts. It is for the assessee to establish that there was delay in finalising the accounts of the firm and that he was prevented from filing the return on account of the same. However, unfortunately the facts are not taken note of by the Tribunal.

5. Counsel for the revenue contended that the mere delay in auditing the accounts of the firm itself will not justify the assessee in not filing the return in time because the assessee being the managing partner took no interest to get the accounts audited in time. In other words, if the delay in auditing the accounts of the firm is attributable to the assessee, then the assessee has no defence.

6. Since the finding of the Tribunal on facts is necessary for decision on the reference, we feel that in the interests of justice the matter has to be remitted to the Tribunal for fresh decision after looking into the facts and circumstances of the case and the contentions of the parties referred to above. We accordingly set aside the order of the Tribunal and remit the matter to the Tribunal for fresh decision after giving an opportunity to the assessee and the revenue. While considering the appeal, the Tribunal should take into account matters such as assessee's role in the affairs of the firms where he is a partner, delay, if any, attributable to the assessee in the auditing of accounts of the firms, dates of finalising the accounts of the firms, whether there is further delay in filing the return by the assessee after the firms accounts are audited, etc.

In view of the remand, we decline to answer the reference.

OPEN