(1989) 02 KL CK 0054

In the High Court Of Kerala

Case No : Income-tax Reference No. 321 of 1982

Commissioner of Wealth-tax APPELLANT

Vs

K. Ravindranathan Nair RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

Finance Act, 1965 — Section 68
Voluntary Disclosure of Income and Wealth Act, 1976 — Section 3(1)
Wealth Tax Act, 1957 — Section 2

Citation : (1989) 78 CTR 34 : (1989) 177 ITR 1

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; B.S. Krishnan, for the Respondent

Judgement

Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law for the decision of this court :

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim deduction of the tax liability in respect of the disclosure made u/s 3(1) of the Voluntary Disclosure of Income and Wealth Act, 1976?"

2. The respondent is an assessee to wealth-tax. We are concerned with the assessment year 1970-77. The valuation date for this assessment year is September 30, 1975. The respondent-assessee made a voluntary disclosure u/s 3(1) of the Voluntary Disclosure of Income and Wealth Act, 1976. By such declaration, he became liable to pay Income Tax in the sum of Rs. 11,87,690. The income so declared by the assessee was included by the Wealth-tax Officer in the chargeable net wealth returned by the assessee for the assessment year 1976-77. The Income Tax liability was not allowed as a deduction. The Wealth-tax Officer took the view that the liability was created by the promulgation of the Ordinance and the assessee made a declaration thereunder and no tax liability attached to the concealed income as on the valuation date, namely, September 30, 1975, since the Ordinance was promulgated after the valuation date. In

appeal, the Commissioner of Income Tax (Appeals), relying on the Bench decision of this court in C. K. BABU NAIDU Vs. WEALTH-TAX OFFICER, "A" WARD, CALICUT, AND ANOTHER SUNDARARAJ v. WEALTH-TAX OFFICER, "A" WARD, CALICUT, AND ANOTHER., , accepted the assessee''s contention and allowed the appeal. The above Bench decision dealt with the liability of an assessee on a declaration made u/s 68 of the Finance Act, 1965, In second appeal, the Income Tax Appellate Tribunal concurred with the decision of the Commissioner of Income Tax (Appeals), by order dated May 4, 1981. The Revenue pleaded before the Appellate Tribunal stating that the Ordinance under which the declaration was made had not been promulgated on the valuation date, and there cannot be a question of "liability" existing on the valuation date, so as to be allowed as a deduction in the computation of the net wealth of the assessee. Relying on similar provisions occurring in Section 68 of the Finance Act, 1965, as also the Bench decision of this court in C. K. BABU NAIDU Vs. WEALTH-TAX OFFICER, "A" WARD, CALICUT, AND ANOTHER SUNDARARAJ v. WEALTH-TAX OFFICER, "A" WARD, CALICUT, AND ANOTHER., , the Tribunal negatived the plea of the Revenue. According to the Tribunal, the words "any income chargeable to tax" occurring in Section 3(1) of the Voluntary Disclosure of Income and Wealth Act, 1976, indicated that the declaration is only of income that has escaped assessment, that is, income which otherwise should have been part of the assessed income, but which for certain other reasons failed to be included in the total income. It was further held that the different kinds of cases in which the declarations may be made u/s 3(1) of the Voluntary Disclosure of Income and Wealth Act, 1976, are similar to the provisions contained in Section 68 of the Finance Act, 1965, and so the Bench decision of this court in C. K. BABU NAIDU Vs. WEALTH-TAX OFFICER, "A" WARD, CALICUT, AND ANOTHER SUNDARARAJ v. WEALTH-TAX OFFICER, "A" WARD, CALICUT, AND ANOTHER., will govern the issue, Thereafter, at the instance of the Revenue, the above question of law has been referred for the decision of this court.

3. We heard counsel for the Revenue as also counsel for the respondent-assessee. In Ahmed Ibrahim Sahigra Dhoraji Vs. Commissioner of Wealth Tax, Gujarat, , the Supreme Court has held that the liability to pay Income Tax on concealed income disclosed under the Voluntary Disclosure Scheme is deductible as a "debt owed" on the valuation date. The court held that the amount declared u/s 68 of the Finance Act, 1965, has the liability to pay Income Tax imbedded in it on the valuation date but only the ascertainment of that liability is postponed to a future date. The Supreme Court held that the declaration contemplated u/s 68 of the Finance Act, 1965, is a declaration in respect of income of earlier years which has been concealed and on which tax was payable during the relevant assessment years in the ordinary course. Section 68 is in the nature of a package deal and the net result achieved is that the declarant is treated as having discharged all his liability in respect of the said income under the Income Tax law. The Supreme Court approved the Bench decision of this court in C. K. BABU NAIDU Vs. WEALTH-TAX OFFICER, "A" WARD, CALICUT, AND ANOTHER

SUNDARARAJ v. WEALTH-TAX OFFICER, "A" WARD, CALICUT, AND ANOTHER., .

4. We are of the view that the fact that the Voluntary Disclosure of Income and Wealth Act, 1976, was promulgated after the valuation date for this assessment year, in the case of the assessee herein, is irrelevant and does not in any way alter the situation. We are of the view that the Appellate Tribunal was justified in holding that the assessee is entitled to claim the deduction of the tax liability in respect of the disclosure made u/s 3(1) of the Voluntary Disclosure of Income and Wealth Act, 1976.

5. Our answer to the question referred to us is in the affirmative, against the Revenue and in favour of the assessee.

6. A copy of this judgment, under the seal of this court and the signature of the Registrar, will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.