(1991) 02 KL CK 0033

In the High Court Of Kerala

Case No : Income-tax Reference No. 142 of 1988

Commissioner of Wealth-tax APPELLANT

Vs

K.G. Xavier RESPONDENT

Date of Decision : 26-02-1991

Acts Referred:

Citation : (1991) 99 CTR 266 : (1991) 191 ITR 169

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

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

Judgement

K.S. 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 Appellate Tribunal was right in law in holding that the additions made by the Income Tax Officer in the Income Tax assessment are not tangible assets which continued to exist on the valuation date and that the aforesaid items cannot be included in the wealth-tax assessments and are to be deleted ?"

2. The respondent is an assessee to wealth-tax. He is a partner of Geo Sea Foods. We are concerned with the wealth-tax assessment of the respondent/ assessee for the year 1974-75. The relevant valuation date is March 31, 1974. For the same assessment year (1974-75), the Income Tax Officer has included the following four items in the total income of the assessee :

(i) 1/5th share in inflation of purchases and general expenses in the case of Geo Sea Foods. Rs. 25,538

(ii) 1/5th share in suppression of closing stock of Geo Sea Foods. Rs. 88,694

(iii) 1/5th share of import licence premium of Geo Sea Foods Rs. 6,446

(iv) 1/5th share in bogus liabilities of Geo Sea Foods Rs. 78,874

3. The Wealth-tax Officer made additions to the wealth of the assessee in proportion to the share of the assessee in the firm as tangible assets with reference to the additions made in the corresponding Income Tax assessment order for the identical year 1974-75, in the case of the firm, Geo Sea Foods. In the appeal relating to the wealth-tax assessment, the Appellate Assistant Commissioner deleted item No. 1 and agreed with the inclusion of the items Nos. 2, 3 and 4 in the net wealth of the assessee as on the valuation date. In second appeal the Income Tax Appellate Tribunal held that the additions made in the Income Tax assessment by the Income Tax Officer cannot be said to be tangible assets that continued to exist on the valuation date and so not includible in the net wealth of the assessee. It is thereafter, at the instance of the Revenue, that the question of law formulated hereiriabove has been referred for the decision of this court.

4. We heard counsel for the Revenue, Mr. P. K. R. Menon, as also counsel for the respondent/assessee. Counsel for the Revenue argued that, in view of the decision of the Supreme Court in Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh, , the intangible addition should be construed to be part of the real income and should be held to have the same concrete existence and, on that basis, it should have been held by the Appellate Tribunal that they are "assets" on the valuation date assessable as wealth under the Wealth-tax Act as well. Counsel for the Revenue further stressed that the intangible additions made in the Income Tax assessment are for the same year 1974-75 and once such additions are considered to be part of the real income of the assessee, it cannot admit of any doubt that they will form part of the "assets" on the relevant valuation date under the Wealth-tax Act. On the other hand, counsel for the assessee contended that the additions made or available in a concrete form are only intangible on the relevant valuation date and so the Appellate Tribunal was justified in holding that such intangible additions cannot be held to be assets on the relevant valuation date.

5. On hearing the rival pleas, we are of the view that the plea of the Revenue should prevail. In Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh, , the Supreme Court dealt with "intangible" assets as follows :

"... Now it can hardly be denied that when an ''intangible'' addition is made to the book profits during an assessment proceeding, it is on the basis that the amount represented by that addition constitutes the undisclosed income of the assessee. That income, although commonly described as ''intangible'', is as much a part of his real income as that disclosed by his account books. It has the same concrete existence. It could be available to the assessee as the book profits could be."

6. If the said intangible assets should be available to the assessee, like other

book profits, we have no doubt in our mind that it will constitute an asset of the assessee on the relevant valuation date, under the Wealth-tax Act also.

7. Counsel for the assessee referred to us the Bench decision of this court in Annamma Paul Perincherry Vs. Commissioner of Wealth-tax, . In that case, there were large additions to the income of the assessee for the assessment years 1957-58, 1958-59 and 1959-60. On the basis of the aforesaid Income Tax assessments, the Wealth-tax Officer included a sum of Rs. 75,000 in the net wealth of the assessee for the three subsequent years 1960-61, 1961-62 and 1962-63. This court held that the assessee did not admit that the additions to the income made for the assessment years 1957-58, 1958-59 and 1959-60 were available with him on any later date, in part or whole, as'' his asset, and there was no presumption that the "whole income" or any part of it continued as an asset of the assessee. There was no material whatever to indicate that there were any assets other than those disclosed in existence on the valuation dates. In other words, this court held that there is no presumption that the intangible additions made in the Income Tax assessments for the earlier years was available or continued to be available to the assessee on the valuation dates of the later years. This decision was approved by the Supreme Court in Commissioner of Wealth Tax, Kanpur Vs. J.K. Cotton Manufacturers Ltd., . The Supreme Court held that the aforesaid decision of the Kerala High Court in so far as it held that there is no presumption that the addition of income made in the earlier years was available after a lapse of a sufficiently long period is a correct statement of the law. We should state that the decision in Annamma Paul Perincherry Vs. Commissioner of Wealth-tax, and the decision in Commissioner of Wealth Tax, Kanpur Vs. J.K. Cotton Manufacturers Ltd., have no application in the present case. In those cases, on the basis of intangible additions made in the Income Tax assessment orders for the earlier years, the sums so added were sought to be included as assets on later valuation dates in the wealth-tax assessments. It was, in such circumstances that the court held that there is no presumption that intangible addition made in the Income Tax assessment of an earlier year continued to be available or was available with the assessee for the later year. The said argument cannot hold good when, for the same assessment year, intangible additions are made in the Income Tax assessments, and the said amount is treated as an asset, as on the valuation date. We are of the view that the Appellate Tribunal was in error in holding that the additions made in the Income Tax assessment for the very same year cannot be considered to be assets for the purpose of wealth-tax on the relevant valuation date.

8. We, therefore, answer the question referred to this court in the negative, against the assessee and in favour of the Revenuje.

9. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.