
(1998) 11 KL CK 0040

In the High Court Of Kerala

Case No : IT Ref. No's. 147 to 150 of 1996 and 62 to 64 of 1997

COMMISSIONER OF WEALTH TAX

APPELLANT

Vs

N.C.I RAJAN

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Income Tax Act, 1961 — Section 132

Citation : (1999) 153 CTR 370

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

Bench : Full Bench

Advocate : P.KR. MenonN.R.K Nair, C. Kochunni Nair and Dale P. Kunan, for the Appellant;

Judgement

OMPRAKASH, QJ:

These are two groups of IT Reference relating to the consecutive asst. yrs. 1978-79 to 1980-81 and 1981-82 to 1984-85 pertaining to the one and the same assessee.

2. The questions referred for the opinion of this Court by the Tribunal are as follows:

IT Ref. Nos. 147 to 150 of 1996

"Whether, on the facts and in the circumstances Of the case and considering the fact that a search was conducted in the premises of the assessee under s. 132 of the IT Act, is the Tribunal right in law in holding that the revised return filed by the assessee subsequent to the search is to be considered as a return under the Amnesty Scheme?"

IT Ref. Nos. 62 to 64 of 1997

1. Whether, on the facts and in the circumstances of the case was the Tribunal right in law in holding that the revised return filed by the assessee subsequent to the search should be considered as a return under the Amnesty Scheme?

2. Whether, the Tribunal was right in holding so, when the answer to question No. 12 of CBDT Circular No. 451 dt. 17th Feb., 1986, rules out any immunity for assessee whose premises have been searched by the tax authorities?"

3. The submission of the learned senior standing counsel before us is that search was conducted on the premises of the assessee on 23rd Feb., 1984 and then certain fixed deposits and bank pass-books were seized. The assessee filed return of wealth on 31st March, 1986, declaring additional net wealth for the purpose of Amnesty Scheme. It is submitted by the senior standing counsel that no advantage could be taken by the assessee of the return filed after the search operation having been conducted. The Tribunal negated the contention of the Revenue stating that return filed for taking benefit of the Amnesty Scheme was bona fide. It is further submitted by the senior standing counsel that to save from the consequences of search operation, the assessee filed return on 31st March, 1986, under compelling circumstances and, therefore, return so filed could not be taken into consideration for the purpose of the Amnesty Scheme.

4. The question whether or not return filed after the date of search operation could be considered for the purpose of Amnesty Scheme came up for consideration in Commissioner of Wealth Tax Vs. N.C.J. John, and then we held as follows:

..... we are of the considered view that the scheme cannot be construed in a narrower fashion that an assessee will be deprived of its benefit, simply because he was subjected to search, notwithstanding that there was no detection of any concealment. The scheme has to be interpreted rationally. We do not agree with learned senior standing counsel that the scheme is to be interpreted by applying a strait-jacket formula that it excludes the class of assessees, who were subjected to a search operation. If the scheme is interpreted in the manner which is canvassed by the Revenue before us, then it would not only give rise to an anomalous position, but absurd results, causing great injustice to the assessees and considerable loss of revenue to the Department."

5. The submission of the learned senior standing counsel before us is that the parameters as laid down in the case of N.C.J. John (supra) have not been and could not have been taken into consideration by the Tribunal, inasmuch as the judgment dt. 15th July, 1998, in the case of N.C.J. John (supra) was not before the Tribunal. He submits that the case be remanded to the Tribunal to pass the orders afresh taking into consideration the aforesaid decision of this Court.

6. We have carefully gone through the two sets of orders of the Tribunal. It is correct that the Tribunal has not analysed the matter in the way we laid down the guidelines in our judgment in the case of N.C.J. John to find out as to in what circumstances the return filed to take advantage of the Amnesty Scheme after the search operation could be taken into consideration for the purpose of the Amnesty Scheme.

7. It will therefore, be nothing but appropriate to set aside the orders of the

Tribunal and remand the case back to the Tribunal for passing fresh orders taking into consideration the observations made by us in the case of N. C.J John (supra).

For the above reasons we set aside the orders of the Tribunal, insofar as they relate to the above mentioned questions and return all the questions referred to this Court unanswered to the Tribunal directing it to pass orders afresh taking into consideration our judgment in the case of N.C.J. John (supra).