

(1998) 07 KL CK 0034

In the High Court Of Kerala

Case No : Income-tax Reference No's. 101 and 124 to 126 of 1995

Commissioner of Wealth Tax

APPELLANT

Vs

N.C.J. John

RESPONDENT

Date of Decision : 15-07-1998

Acts Referred:

Income Tax Act, 1961 — Section 132, 147, 148, 256(2)
Wealth Tax Act, 1957 — Section 17

Citation : (1998) 149 CTR 299 : (1998) 233 ITR 475 : (1998) 101 TAXMAN 468

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; C. Kochunni Nair and Dale P. Kurian, for the Respondent

Judgement

Om Prakash, C.J.—Pursuant to the direction u/s 256(2) of the Income Tax Act, 1961 (briefly, "the Act"), the Income Tax Appellate Tribunal, at the instance of the Revenue, referred the following questions relating to the consecutive assessment years 1982-83 to 1984-85 for the opinion of this court :

"Question in R.A. No. 85(Coch.) of 1991--Assessment year 1982-83 :

Whether, on the facts and in the circumstances of the case and considering the search conducted in the premises of the assessee u/s 132 of the Income Tax Act, is the Appellate 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 ?"

Questions in R.A. Nos. 86(Coch.) of 1981 and 87(Coch.) of 1981-Assessment years 1983-84 and 1984-85 :

(1) Whether, on the facts and in the circumstances of the case, was the Appellate 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 Appellate Tribunal was right in holding so, when the answer to question No. 12 of the Central Board of Direct Taxes Circular No. 451 (see [1986] 158 ITR 135), dated February 17, 1986, rules out any immunity for assessee whose premises have been searched by the tax authorities ?"

The facts as found by the Appellate Tribunal, are that the assessment for the assessment year 1982-83 had been completed without making any addition on February 20, 1985. The Amnesty Scheme, 1985, came to be declared by a circular dated June 26, 1985. To take advantage of the Amnesty Scheme, the assessee filed a revised return for the assessment year 1982-83 and filed original returns for the assessment years 1983-84 and 1984-85. The return for the assessment year 1983-84 was filed on December 19, 1985. The record does not indicate as to when the return for the assessment year 1984-85 was filed. The Assessing Officer reopened the assessment proceedings for the assessment year 1982-83 on the basis of the revised return and proceeded to complete the reassessment for the assessment year 1982-83 and the assessments for the years 1983-84 and 1984-85 treating the returns as not having been filed under the amnesty scheme on the ground that a search was conducted on the premises of the assessee on February 23, 1984. The Assessing Officer was of the view that the benefit of the Amnesty Scheme could not be claimed by one on whose premises a search was conducted. The Assessing Officer believed so on the basis of the answer to question No. 12, as contained in the Amnesty Scheme. Question No. 12 and answer thereto are as under (page 137) :

"Question No. 12.--Can immunity given by the circulars be availed of by assesseees whose premises have been searched by the tax authorities ?

Answer--No."

The assessee contended before the Assessing Officer that during the search operation nothing was seized ; no concealment was detected ; no action was taken u/s 147 for any of the assessment years and, therefore, he should not be deprived of the benefit of the Amnesty Scheme simply on the ground that a search operation was conducted on his premises on February 23, 1984. Such pleas of the assessee did not find favour with the Assessing Officer and the first appellate authority. The Appellate Tribunal, accepting the contention of the assessee that he was entitled to the benefit of the Amnesty Scheme, found as follows :

"There is force in the contention of Shri Mahadevan that the Department has not detected anything which would alone shut out the assessee from the benefits of the Amnesty Scheme. He relied on the Amnesty circulars as found in the paper book for the proposition that the assessee can certainly declare higher incomes even in respect of the completed assessments or in a case of search, if the Revenue has not detected any concealment of income. In Circular No. 451 (see [1986] 158 ITR 135), dated February 17, 1986, question No. 1 and the answer thereto are relevant, which read as under :

"Question.--What will be the procedure required to be followed by the assessee who wants to declare income or wealth in respect of the past years,

(a) in case where the assessments pertaining to those years are already completed ;

(b) in case where the assessment in respect of those years are pending ?

Answer.--In cases where the assessments are already completed, the taxpayer should approach the concerned Commissioner of Income Tax with the full disclosure of the amounts of income and/or wealth concealed in various years and should also file returns for the relevant years. He should also produce evidence of payment of taxes before March 31, 1986. The filing of the returns will be regularised by issue of formal notices u/s 148 of the Income Tax Act/ section 17 of the Wealth-tax Act. In cases where the assessments are pending, the taxpayer should file revised return before the Income Tax Officer along with evidence of payment of taxes."

Question No. 19 and the answer thereto are also relevant.

"Question.--Kindly clarify the expression before detection by the Department ?

Answer.--If the Income Tax Officer has already found material to show that there has been concealment, that would mean the Department has detected the concealment. If the Income Tax Officer only had prima facie belief, that would not mean concealment has been detected."

Therefore, unless there has been prior detection of income, the benefits of the Amnesty Scheme cannot be denied to the assessee merely because the assessee had come under the Amnesty Scheme after the search had taken place."

The question for consideration is whether an assessee on whose premises a search was conducted, will not be entitled to the benefit of the Amnesty Scheme. Learned senior standing counsel urges before us that the class of the assessee on whose premises a search was conducted, stand on a different footing than the assessee who were never subjected to any search operation and that the benefit of the Amnesty Scheme was not intended to be extended to the class of the assessee who were subjected to a search operation. The question is whether an assessee on whose premises a search operation was conducted but no concealment was detected, stands on a different footing from an assessee who was never subjected to a search operation.

2. In the case of the instant assessee, the Appellate Tribunal clearly recorded a finding of fact that during the search operation conducted on February 23, 1984, no material was seized leading to detection of any concealment. If there was no detection of concealment at the time of search, can it be said that the assessee will still be deprived of the benefit of the Amnesty scheme. We do not agree with the submissions of learned senior standing counsel that the moment a search operation is conducted on anybody's premises he becomes disentitled to the

benefit of the Amnesty Scheme. A search may be conducted on wrong information without detecting any concealment. Moreover, a search may be conducted on a few premises of an assessee and to take advantage of the Amnesty Scheme, the assessee may declare the income or wealth, which he kept at different premises, which was not detected to by the raiding party at the time of search and from which no concealment was detected. The question will arise whether the doors of the Amnesty Scheme will be closed in these situations also. A search without detection of any concealment, in our opinion, is of no consequence and, therefore, the assessee should not be deprived of the benefit of the amnesty scheme merely by the factum of search ; but if the raiding party had detected some concealment, then the position would have been different. We are fortified in this view by question No. 30 and answer thereto, which are reproduced below (see [1986] 158 ITR 135) :

"Question No. 30.--Whether an assessee could make a declaration in respect of assets or income which is not the subject-matter of seizure ?

Answer.--Yes, if it has not been already found out in the course of the search."

It is patent from question No. 30 and the answer thereto that it is not the search alone which will exclude the assessee from the benefit of the Amnesty Scheme, but the actual detection of assets or income sought to be declared under the Amnesty Scheme, could deprive an assessee of the benefit of the scheme.

3. The Amnesty Scheme has been introduced for the benefit of the taxpayers as well as for the benefit of the Revenue. The provisions of the scheme should be construed keeping in view its purpose and the context. Rigid or pedantic interpretation of the scheme has to be avoided. Keeping in view the interpretative principle and the answer to question No. 30 as contained in the scheme itself, 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 assessee, 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 assessee and considerable loss of revenue to the Department.

4. No concealment having been detected during the search operation conducted on the premises of the assessee, we agree with the Appellate Tribunal that the assessee was entitled to the benefit of the Amnesty Scheme for the consecutive assessment years 1982-83 to 1984-85.

5. In the result, we answer the question referred to us for the assessment year 1982-83 and question No. 1 relating to the assessment years 1983-84 and

1984-85 in the affirmative, that is, in favour of the assessee and against the Revenue. Question No. 2 relating to the assessment years 1983-84 and 1984-85 is also answered in the affirmative, in that the Appellate Tribunal was right in holding that the assessee was entitled to the benefit of the Amnesty Scheme, notwithstanding the answer to question No. 12, as contained in the Central Board of Direct Taxes Circular No. 451 (see [1986] 158 ITR 135), dated February 17, 1986, which has to be read and interpreted in view of question No. 30 and the answer thereto.