

(1998) 11 KL CK 0036

In the High Court Of Kerala

Case No : Income Tax R. No"s. 147, 148, 149 and 150 of 1996 and 62 to 64 of 1997

Commissioner of Wealth-tax

APPELLANT

Vs

N.C.J. Rajan

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Income Tax Act, 1961 — Section 132

Citation : (1999) 240 ITR 715

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.

1. These are two groups of I. T. Rs. relating to the consecutive assessment years 1978-79 to 1980-81 and 1981-82 to 1984-85 pertaining to one and the same assessee.

2. The questions referred for the opinion of this court by the Income Tax Appellate Tribunal are as follows :

I. T. R. 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 u/s 132 of the Income Tax 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 ?"

I. T. R. Nos. 62 to 64 of 1997 :

"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 CBDT Circular No. 451 (see [1986] 158 ITR 135), dated February 17, 1986, rules out any immunity for the assessee whose premises have been searched by the tax authorities ?"

3. The submission of learned senior standing counsel before us is that a search was conducted on the premises of the assessee on February 23, 1984, and then certain fixed deposits and bank pass books were seized. The assessee filed a return of wealth on March 31, 1986, declaring additional net wealth for the purpose of the 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 operations have been conducted. The Appellate Tribunal negated the contention of the Revenue stating that the return filed for taking benefit of the Amnesty Scheme was bona fide. It is further submitted by senior standing counsel that to save from the consequences of search operation, the assessee filed the return on March 31, 1986, under compelling circumstances and, therefore, the return so filed could not be taken into consideration for the purpose of the Amnesty Scheme.

4. The question whether or not the return filed after the date of search operation could be considered for the purpose of the Amnesty Scheme--came up for consideration in Commissioner of Wealth Tax Vs. N.C.J. John, and then we held as follows (page 479) :

"... 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."

5. The submission of learned senior standing counsel before us is that the parameters as laid down in the case of Commissioner of Wealth Tax Vs. N.C.J. John, have not been and could not have been taken into consideration by the Appellate Tribunal, inasmuch as the judgment dated July 15, 1998, in the case of Commissioner of Wealth Tax Vs. N.C.J. John, was not before the Appellate Tribunal. He submits that the case be remanded to the Appellate 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 Commissioner of Wealth Tax Vs. 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 Appellate 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 Commissioner of Wealth Tax Vs. N.C.J. John, .

8. For the above reasons, we set aside the orders of the Appellate Tribunal, in so far 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 Commissioner of Wealth Tax Vs. N.C.J. John, .