(1989) 10 KL CK 0046

In the High Court Of Kerala

Case No : Original Petition No. 10403 of 1988 (S)

Edayanal Constructions APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 04-10-1989

Acts Referred:
Income Tax Act, 1961 — Section 256, 68

Citation : (1990) 183 ITR 671 : (1990) 52 TAXMAN 328

Hon'ble Judges : Varghese Kalliath, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : C.N. Ramachandran Nair and Antony Dominic, for the Appellant; P.K. Ravindranatha Menon and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—The petitioner is an assessee to Income Tax. The respondent is the Revenue. We are concerned with the assessment year 1984-85. As much as six questions are formulated in paragraph 6 of the original petition which the petitioner prays shall be directed to be referred to this court by the Income Tax Appellate Tribunal, The short question that arises for consideration is whether the Appellate Tribunal was justified in sustaining the addition of Rs. 1,65,000 as income from undisclosed sources. In making the assessment, the assessing authority found cash credits in the names of six persons in the accounts of the assessee, totalling Rs. 1,65,000. A few of such persons were examined. Even so, the assessing authority as well as the first appellate authority held that the assessee had failed to substantiate the various cash credits as genuine. The Income Tax Appellate Tribunal, in every detailed order dated September 10, 1987, concurred with the above reasoning and conclusion of the Income tax Officer and the Commissioner of Income Tax (Appeals). The Appellate Tribunal considered the cash credits as also the legal effect flowing therefrom. The Appellate Tribunal posed the question that the burden of proving the identity as well as the capacity of the lender and genuineness of the loans is on the assessee. It is so as could be gleaned from Section 68 of the Income Tax Act. The Appellate Tribunal considered the materials available before it with regard to the six cash credits and concluded that the assessee failed to prove that the credits are genuine. It is on an appreciation of the facts available before it that the Appellate Tribunal held so. The explanation given by the assessee was rejected. A few documents were filed before the Appellate Tribunal for the first time. The Tribunal declined to refer to such documents, since they were not produced before the authorities below. So, finally, the entire plea of the assessee turned upon the veracity of the statements given by the lenders as also the certificates produced before the officer. The plea of borrowal from the said six persons was not accepted. They were found to be not genuine. It is on this basis that the Appellate Tribunal sustained the addition of Rs. 1,65,000 as income from undisclosed sources. The questions whether the cash credits were genuine and the assessee had borrowed the amounts as a fact, etc., are largely questions of fact. The Appellate Tribunal had analysed the entire material available before it and had concluded that the cash credits are not genuine. The said finding of fact is based on material. It cannot be stated that the said finding is based on "no material" or irrational or otherwise perverse. The estimation of income was also arrived at on a preponderance of probabilities. In this view of the matter, we are of opinion that the six questions of law, formulated by the assessee in paragraph 6 of the original petition, centre round the cardinal question as to whether the cash credits are genuine or not. The final fact-finding authority, the Appellate Tribunal, has held that they are not so. That being a question of fact, it is binding on us. We are of the view that the questions of law, formulated in para 6 of the original petition, are not referable questions of law. Therefore, we decline to direct the Income Tax Appellate Tribunal to refer the said questions for the decision of this court.

2. The original petition is dismissed.

