(2000) 11 KL CK 0061

In the High Court Of Kerala

Case No : IT Appeal No''s. 1300 to 1302 (Coch) of 1987 8 November 2000

G. YATHEESH APPELLANT

Vs

COMMISSIONER OF Income Tax RESPONDENT

Date of Decision : 08-11-2000

Acts Referred:

Citation : (2000) 114 TAXMAN 424

Hon'ble Judges : S. Sankarasubban, J;Kumari A. Lekshmikutty, J

Bench : Full Bench

Advocate : C. Kochunni Nair and M.C. Madhavan, for the Assessee P. K.R. Menon and George K. George, for the Revenue, for the Appellant;

Judgement

Sankarasubban J.

The ITRs are at the instance of the assessee. When the matter came up for argument today, the learned counsel for the assessee submitted that the assessee is not interested in getting an answer to the reference and, hence, it is not necessary for the court to answer the reference. The question arises is whether it is compulsory on the part of the court to answer the reference. In Smt. Indramanidevi Parasrampuria Vs. Assistant Controller of Estate Duty, , the High Court of Madhya Pradesh held as follows :

"Where a party at whose instance, a reference is made is not interested in pursuing the reference and getting the opinion of the High Court on the question referred to it by the Tribunal, the High Court would decline to answer the question referred." (p. 593)

In the judgment of the Madhya Pradesh High Court in Gajadhar Prasad Nathu Lal Vs. Commissioner of Wealth-tax, , the question arose whether a party has the right to withdraw the reference. Dealing with the contention, the court observed as follows:

"Though the party at whose instance the reference has been made cannot be permitted to withdraw it, yet if the party fails to appear at the hearing of the reference or appears and says that it is not interested in the reference being answered or makes an application for withdrawing the reference, then this court is not bound to answer the question referred and decline to answer the reference." (p. 615)

Their Lordships referred to the decision in CIT v. Pothen Joseph & Sons AIR 1957 TC 267. In KARNANI INDUSTRIAL BANK LTD. Vs. COMMISSIONER OF Income Tax, WEST BENGAL., , the High Court of Calcutta held that there is no provision in the Act under which the party who has caused a reference to be made can be allowed to withdraw it after the Tribunal has made a reference to the High Court; and that the reference must be decided by the High Court unless the party who has caused the reference to be made fails to appear and fails to take any interest in the matter.

2. After considering the entire matter, we are of the view that since the party is not interested in getting an answer to the reference, we decline to answer the reference.

ITRs are disposed of as above.