(1998) 03 KL CK 0040

In the High Court Of Kerala

Case No : O.P. No. 16506 of 1997

K. BEERAN APPELLANT

Vs

COMMISSIONER OF INCOME TAX RESPONDENT

Date of Decision : 27-03-1998

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1999) 153 CTR 508

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

Bench : Full Bench

Advocate : TM. SreedharanN. Unniknshnan, P. K.R. Menon and N.R.K. Nair, for the Appellant;

Judgement

OM PRAKASH, C.J.

Heard counsel for the parties.

2. By this application made under s. 256(2) of the IT Act, 1961, the assessee requires us to direct the Tribunal to refer the following questions for the opinion of this Court :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in sustaining a sum of Rs. 6,36,077 representing the investments and bank deposits during the previous year as the income of the assessee under "Other sources" for 1991-92 assessment ?

(ii) Whether the Tribunal''s conclusion that "the Department has succeeded in establishing that the assessee did not bring any Kuwaiti Dinars to India" and the investments which were considered in the assessment "was his own income earned in India during the previous year" is legally sustainable. Is not the above finding unsupported by any evidence or material on record?

(iii) In the absence of any evidence or material brought on record by the Department to discredit the explanation given by the assessee, for the investment as deposits, was the Tribunal justified in rejecting the explanation, in the light of the facts stated in the affidavit and the evidences in support thereof. "

3. The case of the assessee is that his two brothers repatriated to India during the Kuwait war and they brought with them Kuwaiti Dinars which were sold through private agents and the sale proceeds were utilised for acquiring land in India. The explanation of the assessee was not accepted and the investment in the land was treated as having been made by the petitioner from undisclosed sources.

4. The case of the assessee is that the Kuwaiti Dinars had to be sold to private agents, as the Kuwaiti Dinars during the war days were not accepted either by Banks or by recognised agents. There is no explanation in the affidavit that the assessee had to sell Kuwaiti Dinars perforce to private agents, because they were not accepted by any recognised agent in the country. Considering the facts and circumstances of the case, the Tribunal came to the conclusion that the assessee failed to disclose that the investment in the land was from the sale proceeds of the Kuwaiti Dinars.

5. The question is whether the investment in the land was made from the sale proceeds of the Kuwaiti Dinars. The question is a question of fact and the finding recorded in this behalf, is a pure finding of fact. No question of law, therefore, arises from such finding of the Tribunal.

For these reasons, the application is rejected.

