(1996) 09 KL CK 0025

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 177 and 178 of 1991

K. Mahim APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:
Income Tax Act, 1961 — Section 271(1)

Citation : (1998) 232 ITR 115

Hon'ble Judges : V.V. Kamat, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : S.A. Nagendran, K.M. Majeed and Premjit Nagendran, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

V.V. Kamat, J.—These references relate to the assessment years 1967-68 and 1966-67, respectively, and the questions expecting our answer are as follows :

"Assessment year 1967-68 :

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that penalty was liable to be imposed on the assessee u/s 271(1)(c) of the Income Tax Act, 1961, for the year 1967-68 on the ground of concealment of income relating to contract works ?

Assessment year 1966-67 :

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that penalty was liable to be imposed on the assessee u/s 271(1)(c) of the Income Tax Act, 1961, for the year 1966-67 on the ground of concealment of income relating to contract works ?"

With regard to both the assessment years, returns were filed on June 26, 1968. It appears that for the assessment year 1967-68, Rs. 2,723 was shown as income liable to tax and for the assessment year 1966-67, it was shown as Rs. 5,692.

Thereafter, it appears that on January 30, 1971, revised returns were filed. Particulars are unnecessary in regard thereto. For the assessment year 1967-68, revised income was shown to be Rs. 24,882 and in regard thereto, Rs. 15,700 was shown as business income from contract and Rs. 5,982 as income from share profit from Kallatra Constructions. The materials showed that there was an investment of Rs. 30,000 of the asses-see in the firm of Kallatra Constructions and in the said firm, the asses-see was a partner having 1/7th share of profit along with six other partners. This source of investment was disclosed as "(1) Rs. 10,000 received as loan from his uncle, and (2) Rs. 20,000 received from one K. Abdul Kader Haji".

2. In the first step, the Income Tax Officer completed the assessment for the year 1966-67. When the return disclosed an income of Rs. 23,435, with regard to an item amounting to Rs. 6,000 therefrom as income from other sources, an addition of Rs. 7,063 was made by the officer. On the other count, Rs. 10,850 as income from contracts, it was assessed at Rs.11,049. This was with reference to one receipt for Rs. 16,258 for the work done with the executive engineer.

3. It appears that for the assessment year 1967-68, the amount of Rs. 5,962 shown towards share of profit from Kallatra Constructions was increased to Rs. 12,242. Apart from the above orders passed by the Income Tax Officer, the matter was referred to the Inspecting Assistant Commissioner for concealment of income for both the years.

4. The assessee had submitted his explanation dated February 13, 1973, in pursuance of the notice issued by the Inspecting Assistant Commissioner. In the process, for the year 1966-67, a penalty of Rs. 20,000 was imposed and for the year 1967-68, a penalty of Rs. 30,500 was imposed.

5. The Income Tax Appellate Tribunal was in seisin of the situation with regard to the assessment years. The Tribunal, by order dated August 27, 1975, held that for the assessment year 1966-67, a penalty could not be levied. However, with regard to the assessment year 1967-68, the penalty of Rs. 6,000 was sustained. Thus the matter came up before this court in Commissioner of Income Tax Vs. K. Mahim, . This court considered the situation in I. T. R. Nos. 154 and 155 of 1979, at the instance of the Revenue. This court took up for consideration the position as a result of filing of revised returns voluntarily and as to whether it would exonerate the assessee from the liability of penalty u/s 271(1)(c) of the Act. This was in regard to the assessment year 1966-67. The position is concluded by the above judgment against the assessee, because the question has been answered in favour of the Revenue. For completion of the judgment, the question that was framed was as follows (page 742) :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in deciding the appeal for the assessment year 1966-67 on the basis that filing of revised returns voluntarily by the assessee will exonerate the assessee from the penal provision u/s 271(1)(c) of the Income Tax

Act, 1961 ?"

6. With regard to the year 1967-68, this court considered the question in the format of question No. (2), which is as follows (page 742) :

"Whether, on the facts and in the circumstances of the case, and in view of the position that the assessee had filed the revised returns when he came to know that investigations by the Department were going against him, the finding of the Income Tax Appellate Tribunal that the assessee has filed the revised returns ''by himself voluntarily'' and that he had disclosed the income for the assessment year 1966-67, is perverse and unreasonable ?"

7. It would be seen that even in regard to the assessment year in question, a specific conclusion is recorded to the following effect (page 750) ;

"The correct income in relation to that source has now been fixed at Rs. 14,242. We are of the view that the correct income for the purpose of computation of penalty should be reckoned as Rs. 14,242, in the event of its being held that penalty is leviable."

8. It was in this situation, the Income Tax Appellate Tribunal, Cochin Bench, was called upon to consider the questions reproduced at the outset. In paragraph 7 of the order of the Tribunal, with regard to the assessment year 1966-67, the submissions are considered by the Tribunal. Similarly, with regard to the assessment year 1967-68, the question is considered in paragraph 13 of the order of the Tribunal.

9. In fact, reading the earlier judgment of this court, very little was left with the Tribunal to deal with the situation. The Tribunal has taken into consideration and recorded a conclusion that the assessee had concealed the particulars of his income from contracts and, therefore, he is liable to be penalised u/s 271(1)(c) of the Act.

10. With regard to the assessment year 1967-68, the Tribunal has recorded a finding that there has been concealment of income of Rs. 15,700 being income from contract business. With regard to the same assessment year, the Tribunal had to hold back on the conclusions recorded by this court earlier as stated above that the computation of the penalty should be reckoned on the basis of the income at Rs. 14,242. It is on the basis of the above factual reasoning, in a controlled manner, as stated above in view of the earlier decision of this court and taking into consideration all other factors, for the assessment years 1966-67 and 1967-68, minimum penalties have been ordered to be leviable.

11. In our judgment, we will have to appreciate the limitations of learned senior counsel in view of the earlier decision of this court and also the position that the Tribunal has resorted to the imposition of minimum penalty. Learned counsel was left with no other alternative except to meet the situation as a consequence of concealment and the natural shyness of the situation as a result of the imposition of minimum penalty. Considering the question from all angles, it is not possible

to take any other view in the matter in the situation that it is more established that there is concealment.

12. For the above reasons, we answer both the questions in the affirmative, in favour of the Revenue and against the assesses.

13. A copy of this judgment, under the seal of the court and the signature of the Registrar, shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.