(1991) 04 KL CK 0039

In the High Court Of Kerala

Case No : Original Petition No''s. 8289 and 8371 of 1987-S

K. Mahin APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 12-04-1991

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 271(1)(c)

Citation : (1992) 193 ITR 417

Hon'ble Judges : T.L. Viswanatha Iyer, J;G.H. Guttal, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

T.L. Viswanatha Iyer, J.—The assessments relate to the years 1966-67 and 1967-68. The petitioner-assessee filed returns on June 21, 1968, declaring amounts of Rs. 3,692 and Rs. 2,723 respectively for the two years. He filed revised returns on January 30, 1971, for Rs. 23,435 and Rs. 24,882, respectively, by which he declared income from contract business of Rs. 10,850 and Rs. 15,700, respectively, for the two years. For the latter year, he had also declared share of profit from the Kallatra Constructions, Rs. 5,982. After the assessments were completed, proceedings for imposition of penalty u/s 271(1) (c) were initiated on the ground that the assessee had concealed income for both the years. The thrust of the charge was in relation to the income from contract works for the two years and the share of profit from Kallatra Constructions during the latter year. The Inspecting Assistant Commissioner imposed penalty of Rs. 20,000 and Rs. 30,500 respectively, for the two years. On appeal by the assessee, the Tribunal held that there was no concealment of income for the year 1966-67 and cancelled the penalty in its entirety. For the assessment year 1967-68, it was held that there was concealment of income from Kallatra Constructions and, accordingly, a penalty of Rs. 6,000 was sustained as the income declared as per the revised return was only Rs. 5,982. The matter came up before this court in reference. This court held that the filing of the voluntary returns by itself was not sufficient to hold that there was no concealment for the purpose of section 271(1)(c) of the income tax Act, 1961. While holding so, this court stated further that if the omission or error in the first return was honest and bona fide, the fact that the submission of the revised return was belated and after investigation had started, by itself, will not visit the assessee with penal consequences. inter alia, it was observed in the judgment that the income concealed in relation to Kallatra Constructions should be taken to be Rs. 14,242 fixed as per assessment and not Rs. 5,982 as disclosed in the revised return. The facts of this case had to be carefully analysed and examined in the light of the principles and guidelines stated above. This court also observed that the Tribunal had not examined the assessee''s explanation in relation to the charge of concealment of income.

2. For all these reasons, the matter went back to the Appellate Tribunal for fresh consideration. The Tribunal went into the question again and held that the assessee was guilty of concealment of income in relation to the contract work also. There was already a finding that there was concealment of income relating to the Kallatra Constructions which had become final as the assessee had not sought any reference in relation to that. On the quantum of penalty, the Tribunal directed that the penalty shall be the minimum leviable. The petitioner sought reference of various questions of law as arising out of the order of the Tribunal. But the Tribunal refused reference on the ground that they were questions of fact not liable to be referred.

3. Counsel for the petitioner submitted that, even on the principles and guidelines laid down by this court in the earlier judgment, in relation to the filing of the revised return, no penalty was liable to be imposed on the petitioner for the two years in question. He points out that, even before the returns were filed in June, 1968, investigation by the Department was in progress, which had alerted the Department about the contract business, about which the assessee was also aware. He refers to the letter dated September 14, 1967, of the income tax Officer sent to the assessee as a cloth merchant seeking information regarding the solvency certificate obtained by him. He refers to the subsequent series of investigations made by the income tax Officer and letters addressed by him of which one dated March 30, 1967, was addressed to the petitioner as a contractor. He, therefore, submits that this was not a case of the assessee making a revised return knowing fully well that the Department was making investigations and that such investigations will lead to something tangible against the assessee which necessitated a revised return to forestall the plea of concealment of income. On the other hand, he points out that the investigations by the Department were going on even before the original returns were filed, of which the petitioner had knowledge having regard to the letters dated February 14, and March 30, 1967 and, therefore, the original returns and the revised returns were filed only in the circumstances set forth by the petitioner.

4. The question of applying the principles and the guidelines laid down by this court in the earlier judgment to the facts of this case arises for consideration. A question of law does, therefore, arise out of the order of the Tribunal and is, therefore, liable to be referred to this court.

5. Though the Tribunal has found concealment in relation to the Kallatra Constructions even in the earlier proceedings, that has become final and that finding is not liable to be reopened at this stage. The only question open is whether there is concealment of income and liability for penalty u/s 271(1)(c) in relation to the income from contract works.

We, therefore, allow the original petitions and direct the income tax Appellate Tribunal, Cochin Bench, to refer the following questions of law for the opinion of this court u/s 256(2) of the income tax Act, 1961:

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?"

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?"

