(1998) 10 KL CK 0049

In the High Court Of Kerala

Case No : IT Reference No''s. 88 to 90 of 1996

K. Mathew APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 16-10-1998

Acts Referred:
Income Tax Act, 1961 — Section 154, 215

Citation : (1999) 106 TAXMAN 539

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

Bench : Division Bench

Advocate : C. Kochunny Nair, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

Om Prakash, C.J.—At the instance of the assessee, the Tribunal referred the following question, relating to the consecutive assessment years 1976-77, 1977-78 and 1978-79, for the opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the appeal filed by the assessee before the Appellate Assistant Commissioner was not maintainable?

2. The facts, as found by the Tribunal, are that the assessee was a partner in the firms, Muthoottu Mini Chitty Fund, M.George Bros., Chitty Fund, etc. While making assessment for the years under consideration, the Assessing Officer charged interest u/s 215 of the Income Tax Act, 1961 (''the Act''). The assessee approached the Settlement Commission. Pursuant to the order of the Settlement Commission, the Assessing Officer passed orders dated 5-2-1985 for the relevant years (see Annexures D I to D3) stating that the assessments in the case of the assessee stood revised on the basis of which total tax payable by the assessee was much higher than that shown in original returns. He, therefore, re-computed the interest payable u/s 215 by the assessee and raised the demand accordingly.

3. Aggrieved, the assessee filed an appeal to the AAC, who rejected the

contention of the revenue that no appeal would lie against interest charged u/s 215. The AAC took the view that though interest was purported to be charged u/s 215 under orders dated 5-21985, in fact, these were the ratification orders and, hence, were appealable. He further held that in view of the order passed by the Settlement Commission, interest u/s 215 was chargeable only for one year, but interest for larger period was charged and, therefore, he directed the Assessing Officer to modify the orders by levying interest u/s 215 strictly in accordance with the orders passed by the Settlement Commission.

4. The dispute was further carried in appeal by the revenue before the Tribunal and- the latter simply held that interest was charged u/s 215 and, hence, no appeal could lie against the orders dated 5-2-1985, passed by the Assessing Officer.

5. The learned counsel for the assessee submits before us that the reasoning given by the AAC was not touched upon by the Tribunal. He reiterated before us that orders dated 5-2-1985 were, in reality, passed exercising power u/s 154 of the Act for correcting the mistake and to bring the demand of interest u/s 215 in line with the order of the Settlement Commission. The submission is that but for section 154, orders could not have been passed by the Assessing Officer revising the interest. It is submitted that the Tribunal ought to have considered the reasoning advanced before the AAC, which was accepted by him.

6. The learned Sr. standing counsel, however, submits that since the demand of interest u/s 215 was revised pursuant to the order passed by the Settlement Commission and if there was any mistake in the computation of interest, then the assessee could have pointed out the same before the Settlement Commission itself and there was no occasion for him to go in appeal before the AAC. This is how he urges that no appeal would lie against the orders dated 5-2-1985.

7. On these submissions, we are of the view that the case has to be remitted to the Tribunal, who omitted to consider these pleas of the parties.

We, therefore, return the question referred to us unanswered with the observations that the Tribunal will consider the submissions made by the counsel for the assessee as well as by the Sr. standing counsel on behalf of the revenue and then record a clear finding whether appeal would lie against the orders dated 5-2-1985, passed by the Assessing Officer and whether the assessee should have raised this grievance before the Settlement Commission itself.