

(1976) 10 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 5562 of 1974

K. Mohammed

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 21-10-1976

Acts Referred:

Income Tax Act, 1961 — Section 250(4)

Citation : (1977) 1 ILR (Ker) 187 : (1977) 107 ITR 808

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : T.L. Viswanatha Iyer, E.R. Venkiteswaran, P.S. Narayanan and K.S. Menon, for the Appellant; P.A. Francis and P.K.R. Menon, for the Respondent

Judgement

T. Kochu Thommen, J.—The question which arises in this original petition is whether an assessee under the Income Tax Act is entitled to produce fresh evidence before the Appellate Assistant Commissioner. In the returns filed by the assessee for the assessment year 1969-70, two cash credits for Rs. 5,000 and Rs. 5,500 were shown. According to the assessee, the sum of Rs. 5,000 was received by him at the time of his marriage and the other amount of Rs. 5,500 was realised by him on sale of ornaments. For neither of these two amounts was the assessee in a position to produce evidence to substantiate his contention. His explanation was rejected by the assessing authority. At the time of hearing before the Appellate Assistant Commissioner, the assessee sought permission to produce certain documents and examine certain witnesses in support of his contentions regarding the two amounts. This was refused by the Appellate Assistant Commissioner and the refusal was upheld in revision by the Commissioner.

2. Section 250(4) of the Income Tax Act, 1961, provides:

"The Appellate Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Income Tax Officer to make further inquiry and report the result of the same to the Appellate

Assistant Commissioner."

3. This provision authorises the Appellate Assistant Commissioner to make a further enquiry on his own or cause such an enquiry to be made. The expression used is "may" and not "shall". Nevertheless, where an enquiry is called for, the Appellate Assistant Commissioner is not only empowered but is also obliged to allow a further enquiry so as to find out the true state of affairs. A further enquiry necessarily includes the production of additional evidence. Where fresh evidence is available and the assessee is in a position to produce the same, there is no reason why the Appellate Assistant Commissioner should not examine it on merits and pass appropriate orders. Unless the Appellate Assistant Commissioner is satisfied that the request for permission to produce the additional evidence lacks bona fides and is made with a view to causing delay in the proceedings, he is not justified in rejecting the request. His discretion is either to conduct the enquiry himself in the manner he thinks fit or to direct the Income Tax Officer to do so.

4. That a wide discretion is not conferred upon the Appellate Assistant Commissioner is clear from the fact that, unlike in the case of the Income Tax Appellate Tribunal, the Section clearly provides for a further enquiry. In the case of the Tribunal, however, rule 29 of the Income Tax Appellate Tribunal Rules, 1963, specifically states that the parties to the appeal have no right to produce additional evidence, unless the Tribunal specifically grants the permission. This is not so in the case of an appeal before the Appellate Assistant Commissioner. The discretion conferred upon him is much narrower and it has to be exercised in accordance with the well-known principles of law.

5. In the instant case, the very documents which are sought to be produced before him had been considered and accepted by the Appellate Assistant Commissioner in penalty proceedings against the assessee in regard to the same amounts. That being the position, I am not in a position to understand how the Appellate Assistant Commissioner could have, in appeal proceedings before him, refused even to look at these documents. Consequently, the impugned orders, exhibits P-1, P-2 and P-3, in so far as they have disallowed the production of additional evidence before the Appellate Assistant Commissioner, are wrong and are so declared. The Appellate Assistant Commissioner is directed to make a further enquiry on the basis of the additional evidence or direct the assessing authority to make such an enquiry and pass appropriate orders.

6. The original petition is accordingly allowed. No costs.