
(1996) 06 KL CK 0049

In the High Court Of Kerala

Case No : Income-tax Reference No. 32 of 1990

K.M. Mohammed Abdul Khader

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1998) 229 ITR 391

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : C. Kochunni Nair, M.A. Firoz and Dale P. Kurien, for the Appellant;
P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

P.A. Mohammed, J.—This Income Tax reference comes up before us at the instance of the assessee. The questions of law referred to us are as follows :

"(1) In view of the fact that the applicant's valuer is an experienced engineer and an approved valuer who had been relieved from the Kerala Financial Corporation and who is familiar with the local rates, was it not incumbent on the Tribunal to prefer that valuation to the valuation made by the Departmental valuer, whose report does not disclose the materials or data or the basis on which the rates given by him were arrived at ?

(2) Was the Tribunal correct in refusing to give credit for the intangible addition of Rs. 7,990 when the assessee has conceded the amount for wealth-tax assessment and when the Income Tax Officer has not commented against it in his remand report on the ground that it is a new ground before it ?"

2. The assessment year involved in this reference is 1974-75, the accounting period for which ended on March 31, 1974. The assessee in this case is an individual. The main dispute involved in this case relates to the value of a modern well designed double-storeyed building at Kamaleswaram in Trivandrum. The Income Tax Officer requested the Valuation Officer to assess the cost of

construction of the building, The cost of construction up to March 31, 1974, was valued at Rs. 1,19,000. However, on behalf of the assessee, it was urged that the actual investment was much less and that the assessee had funds of Rs. 1,00,595 which were sufficient to meet the entire construction cost. The Income Tax Officer after examining the, details regarding the type of construction and the location of the building arrived at the cost of construction during the period at Rs. 1,19,000. In respect of the amount of Rs. 1,00,595 claimed to have been available with the assessee for the purpose of construction, the Income Tax Officer did not accept the position advanced by the assessee in respect of Rs. 7,990 claimed to be the assessee's share in intangible addition in the case of the firm of P. M. Stores, Trivandrum, for an earlier year. He considered that there was no liquid asset available with the assessee corresponding to that addition of Rs. 7,990. The Income Tax Officer did not allow the claim in respect of this amount also. Being aggrieved by the order of assessment the assessee filed an appeal before the Appellate Assistant Commissioner. In the course of the hearing of the appeal, on behalf of the assessee it was urged that the Valuation Officer had adopted P. W. D. rates which were unrealistic, that the building did not conform to the standards adopted by the C. P. W. D. and that the P. W. D. rates are higher than the rates available in that area. However, the assessee filed a valuation report by a retired technical adviser to the Kerala Financial Corporation. The Appellate Assistant Commissioner, in view of the valuation report so filed by the assessee, remanded the case to the Income Tax Officer for verification of the fresh valuation report. Accordingly, the Income Tax Officer submitted a remand report in which he had stated that the valuer of the assessee had not given any details on the basis of which he had applied various rates for the different items of work. Ultimately, the Appellate Assistant Commissioner accepted the arguments of the assessee stating that the valuation by the valuer appointed by the assessee contained full details and that the physical dimensions tallied with that of the Departmental Valuer. Accordingly, the Appellate Assistant Commissioner directed the Income Tax Officer to re-compute the income on the basis of the valuation report submitted by the assessee's valuer. As against the order of the Appellate Assistant Commissioner the Department filed an appeal before the Income Tax Appellate Tribunal. The Appellate Tribunal did not agree either with the case of the assessee or with the Appellate Assistant Commissioner that the valuation by the valuer of the assessee should be taken to be the correct estimate in the place of the valuation made by the Valuation Cell Officer. In that view of the matter, the appeal filed by the Revenue was allowed and the order of the Appellate Assistant Commissioner was set aside. Thereafter, the assessee filed a reference application before the Tribunal and the Tribunal referred the aforesaid questions for decision.

3. The Tribunal found that the cost of construction estimated by the Income Tax Officer at Rs. 1,19,000 is to be preferred because it is based on relevant evidence and not the cost determined by the valuer of the assessee. The Tribunal also observed that the Income Tax Officer was justified in not giving credit for

the intangible addition of Rs. 7,990 the assessee had. What we could see in this reference is only findings of fact entered by the Tribunal. Of course, the assessee has produced some additional evidence in so far as the value of the building. The decision rendered by the Tribunal is only on clear appreciation of evidence produced by the Revenue as well as the assessee, u/s 256 of the Income Tax Act, a question of law should arise from the findings of the Tribunal and what we could see here is only questions of fact decided by the Tribunal. Of course we are aware that this case was referred to us because of the direction given by this court in O. P. No. 925 of 1982. Whatever may be the position, that will not deter us from deciding whether questions of law arise for decision from the order of the Tribunal. As we have stated above, what is raised before us are only questions of fact and we do not propose to decide such questions. In the aforesaid circumstances, we decline to answer the questions referred to us for decision.

4. 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.