(1996) 08 KL CK 0027

In the High Court Of Kerala

Case No : Income-tax Reference No. 30 of 1992

K.S. Mohammed APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 01-08-1996

Acts Referred:
Income Tax Act, 1961 — Section 147, 41(1)

Citation : (1997) 141 CTR 494 : (1997) 228 ITR 591

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

Bench : Division Bench

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

Judgement

P.A. Mohammed, J.—This Income Tax reference is coming up before us at the instance of the assessee. The question referred for decision is as follows :

" Whether, on the facts and in the circumstances of the case, the Tribunal was correct in their finding that the reopening of the assessment is legal and valid and justifiable ?"

2. The assessee is the proprietor of an export firm and the assessment year involved in this case is 1980-81. The relevant accounting period ended on March 31, 1980. In respect of the said assessment year, the Assessing Officer completed the assessment on August 30, 1983. As against the said order, there was an appeal and the income was finally fixed at Rs. 87,400. In view of the order passed by the Tribunal that the provisions contained in Section 41(1) of the Income Tax Act would be applicable to the assessment year 1980-81, the Income Tax Officer was of the view that this assessment will have to be reopened. While recording the reasons for reopening the assessment, the officer referred to the order u/s 263 and the observations made by the Tribunal. The effect of the order of the Tribunal was that the amount claimed for purchase tax liability was assessable for the year 1980-81.

3. Subsequently, the officer issued a notice u/s 148 on March 31, 1987. After the hearing, he completed the assessment by adding the amount of purchase tax for the year 1977-78 which was exempted by virtue of the notification issued by the Government in view of the provisions contained in Section 41(1). This order was passed on January 29, 1988. The assessee thereafter filed an appeal before the Commissioner of Income Tax (Appeals) contending that the reopening of the assessment was not valid. The Commissioner took the view that the assessee ought to have included a sum of Rs. 3,45,864 as income u/s 41(1) while furnishing the return for the year 1980-81. He has also pointed out the obligation of the assessee to disclose before the Income Tax Officer that the Government had exempted the purchase tax in respect of the accounting year 1977-78 as required u/s 41(1) of the Act. In that view of the matter, the Commissioner upheld the reopening of the assessment. The matter did not end there. The Tribunal after elaborately considering the contentions of both sides, ultimately found that there was a clear waiver by the State Government of purchase tax liability during the relevant accounting period. Therefore, the Tribunal held that the deduction available to the assessee during the year 1977-78 assessed for the year 1978-79 must be recovered u/s 41(1) of the Act. Being dissatisfied with the said order, the assessee filed an application for reference before the Tribunal but in vain. Hence, the present application has been filed u/s 256(2) of the Act.

4. Heard counsel appearing for the assessee and learned senior standing counsel for the Revenue.

5. The reopening of the assessment in this case has been made u/s 147(a) of the Act. The above provision can be invoked in a case where the assessee fails to disclose fully and truly all material facts necessary for his assessment for that year. The question is whether the assessee has failed to disclose fully and truly all materials relevant for assessment for the year 1980-81. The Government have issued notification granting exemption from payment of purchase tax in the case of exporters of prawns. That exemption was specified for a period of two years. When the said notification was in force, the assessee had made provision for purchase tax liability and obtained deduction. When the liability was clearly waived by the Government, it is the duty of the assessee to disclose all the materials with regard to such cessation of liability in the subsequent year. Thus, there is failure on the part of the assessee to disclose such materials during the year in question. It was because of this reason, the Income Tax Officer has initiated proceedings u/s 147(a). The contention that all the materials were there before the Income Tax Officer at the time of assessment cannot be countenanced because it is the duty of the assessee to produce all the relevant materials in so far as the matters relating to the assessment are concerned. The statute imposes an obligation on the assessee to disclose fully and truly all material facts necessary for his assessment. The failure to do so, authorises the Assessing Officer to initiate the proceeding u/s 147 of the Act. The assessee cannot avoid such obligation on the ground that all materials are available with the officer.

Sub-section (1) of Section 41 runs thus ;

" Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to Income Tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not."

6. What is involved in the present case is the cessation of liability for payment of purchase tax. When the assessee has made a specific provision for purchase tax liability and on the basis of that provision he had obtained the tax relief, he is legally bound to disclose to the Assessing Officer the cessation of liability during the subsequent year. Therefore, this is a case where Section 41(1) is clearly applicable and the Revenue is entitled to assess the amount covered by the provision for purchase tax liability during the relevant accounting period. That being the clear position, we think, there is no case for the assessee to succeed in this reference. The order passed by the Tribunal is perfectly legal and valid and it cannot be challenged under any circumstance.

7. In view of the discussion hereinbefore, the question referred to us for decision is answered in the affirmative, that is to say, in favour of the Revenue and against the assessee.

8. 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.