
(2000) 03 KL CK 0027
In the High Court Of Kerala
Case No : Income Tax A. No. 9 of 1999

M. Pappu Pillai

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 23-03-2000

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2000) 162 CTR 211 : (2000) 243 ITR 726

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : O. Ramachandran Nambiar and Prasanna H. Kammath, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Judgement

Arijit Pasayat, C.J.—In this appeal u/s 260A of the Income Tax Act, 1961 (in short "the Act"), the judgment of the Income Tax Appellate Tribunal, Cochin Bench (hereinafter referred to as "the Tribunal"), is under challenge.

2. The factual position relevant for adjudication of the dispute involved, i.e., whether addition of Rs. 1,50,000 as income from other sources was proper, essentially is as follows : The assessee is an individual carrying on business in grocery at Kottayam. For the assessment year 1987-88, he filed a return showing total income of Rs. 85,730. The assessment was completed u/s 143(3) of the Act, determining" the total income at Rs. 2,35,870, which was inclusive of addition of Rs. 1,50,000 as income from "other sources". Such addition was made on the ground that without having sufficient cash balance, expenses were met and the figures were inflated to show availability of higher amounts to cover the expenses met. The assessee's explanation was that income from agricultural sources was available and by mistake the accountant did not make correct entries about the receipts from agricultural income.

3. An addition was assailed before the Commissioner of Income Tax (Appeals), Thiruvananthapuram (hereinafter referred to as "the CIT (Appeals)"). The plea of availability of funds from agricultural income was reiterated. The Commissioner

of Income Tax (Appeals) accepted the explanation offered by the assessee and directed deletion of the addition.

4. The Revenue assailed the correctness of the order of the Commissioner of Income Tax (Appeals) before the Tribunal which held that the assessee had not explained several factors and, therefore, the conclusions of the Commissioner of Income Tax (Appeals) about the availability of cash to be introduced were erroneous. It reversed the order of the Commissioner of Income Tax (Appeals) and confirmed the addition of Rs. 1,50,000.

5. In support of the appeal, learned counsel for the assessee submitted that the approach of the Tribunal is legally not sustainable, as the Commissioner of Income Tax (Appeals) took note of the factual background and directed deletion.

6. Learned counsel for the Revenue supported the order of the Tribunal and submitted that no question of law is involved to warrant interference while exercising powers u/s 260A of the Act.

7. Certain undisputed Factual aspects need to be noted. As has been highlighted in the order of assessment, on several dates figures were manipulated in the cash book to show availability of cash to meet the expenses incurred on a particular date. On April 1, 1986, the total available fund was Rs. 47,329.89. But the opening figure at page 4 was recorded Rs. 97,329.89. Correspondingly, the closing cash balance on April 1, 1986, was inflated to the extent of Rs. 50,000. Similarly, the sum total of receipts at page 8 of the cash book was indicated to be Rs. 1,95,331.38 whereas the actual total was Rs. 1,94,331.38. Cash balance shown on April 2, 1986, is Rs. 454.27. If the figures would not have been inflated, there would have been a negative figure. The sum total of receipts at page 42 is written as Rs. 1,30,562.73 whereas the actual total is Rs. 1,20,562.73. Cash balance shown on April 16, 1986, is Rs. 3,236.92. If inflation would not have been done, cash balance would have been a negative figure. The sum total of receipts at page 125 is written as Rs. 3,12,341.05 whereas the actual figure is Rs. 2,62,341.05, Cash balance shown on May 39, 1986, is Rs. 3,391.69. But for the inflation, there would have been a minus figure. Similarly, the sum total of receipts at page 126 is written as Rs. 96,268.21 whereas the actual figure is Rs. 46,268.21. Cash balance shown was Rs. 4,097.17. But for the inflation, there would have been a minus figure,

8. There is a credit of Rs. 50,000 to the account of the assessee with the State Bank of Travancore, Kottayam, on April 18, 1986. Cash balance available was Rs. "19,893.27. Since there was no cash balance for remittance on account of the closure of the shop, the deposit of Rs. 50,000 has not been reflected in the cash book and the entry has been made on April 19, 1986.

9. The assessee's case was that he was having cash balance of about Rs. 2.25 lakhs on March 31, 1986, which was saving's from the agricultural income from lands owned by the family. He had suffered a loss of Rs. 80,000 in the accounting year 1986-87. The balance amount of Rs. 1,33,000 was available as

on March 31, 1997.

10. The Assessing Officer found that the inflations were regularised by the assessee when there was sufficient cash. Inflation of Rs. 1,000 on April 2, 1986, was regularised on April 6, 1986. While taking peak amounts of such credits, Rs. 1,50,000 was worked out. The Tribunal noticed that the plea about the accountant having forgotten to make the credit entries was not acceptable. It found that if really cash was available, there was no reason not to make the credit entries in the names of the members of the family. It was not a case of non-entry of receipts. On the contrary, it was a case of inflation of figures. Further, it was found unbelievable that a person having bank accounts would keep Rs. 2.25 lakhs cash at home. The explanation offered by the assessee was found to be not acceptable.

11. We find that the conclusions are essentially factual and the Tribunal, after having taken note of all relevant aspects, found the explanation regarding inflated entries to be not acceptable. It found that the assessee had not discharged the onus regarding "the unexplained cash introduced in the accounts. That being the position, we do not consider this to be a fit case for interference. Appeal u/s 260A of the Act can be only in respect of a "substantial question of law". The expression "substantial question of law" has not been defined anywhere in the statute. But it has acquired a definite connotation through various judicial pronouncements. In *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, the apex court laid down the following tests to determine whether a substantial question of law is involved. The tests are : (1) whether directly or indirectly it affects substantial rights of the parties, or, (2) the question is of general public importance, or, (3) whether it is an open question in the sense that issue is not settled by pronouncement of the Supreme Court or Privy Council or by the Federal Court, or (4) the issue is not free from difficulty, and (5) it calls for a discussion for alternative view. There is no scope for interference by this court on a finding recorded when such finding could be treated to be a finding of fact. A finding of fact must, therefore, be held to have become final. The appeal is accordingly dismissed.