
(1996) 09 KL CK 0027

In the High Court Of Kerala

Case No : Income Tax R. No. 39 of 1993

Manarkattu Bros. (P.) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-09-1996

Acts Referred:

Income Tax Act, 1961 — Section 154, 43B

Citation : (1997) 227 ITR 586

Hon'ble Judges : V.V. Kamat, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : M.C. Sen and Prakash Thomas, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

V.V. Kamat, J.—The Income Tax Appellate Tribunal expects our answers to the following two questions :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that in view of the amendment of Section 43B by the Finance Act, 1989, introducing Explanation 2, the appellate order dated September 2, 1988, was liable to be rectified and the sum of Rs. 3,08,424 being sales tax which was payable only after the end of the accounting year was nevertheless to be disallowed ?

2. Whether, in view of divergent views on amendments to Section 43B of the Income Tax Act, the question whether the sales tax liability of Rs. 3,08,424 which was payable only after the end of the year was an admissible deduction is one which is debatable and if so whether the Tribunal was justified in rectifying the appellate order ?"

2. As far as question No. 1 is concerned in I. T. R. Nos. 141 and 142 of 1987, by the judgment dated June 10, 1996 (see Commissioner of Income Tax Vs. A. Kunjumytheen Kunju,), this court (of which one of us--myself dictated the judgment) had an occasion to consider the question of applicability of Section

43B of the Income Tax Act, 1961, with regard to the aspect of retrospectivity. We have already observed that the amendments introduced to the provisions of Section 43B of the Act by the Direct Tax Laws (Amendment) Act, 1987, the Finance Act, 1988, and the Finance Act, 1989, changed the situation with regard to the contents of the provisions of Section 43B of the Act. The Finance Act, 1989, relating to the amendments made in 1989 by its second proviso to Section 43B came to be substituted and it came into force on April 1, 1989. Explanation 2 also came to be amended by the said amendment--the Finance Act, 1989 (introducing a deeming provision that the said Explanation 2 will be deemed to have been inserted with effect from April 1, 1984). On the basis of this statutory position, we have already taken the view that with regard to the assessment year 1984-85 (which is the same year in this reference before us) the legal consequence of the deeming provision with reference to Explanation 2 having been brought on record in pursuance of the Finance act, 1989, would put the situation beyond the pale of any controversy or discussion in regard thereto. This court has proceeded further to state that a bare reading of Explanation 2 to Section 43B which is statutorily and legally on the statute book on and from April 1, 1984, would show that even if the concerned amount might not have been payable within the year in question under the relevant taxation law, it would have to be understood as "any sum payable" in the context of the situation of the amended provision.

3. In the process of reasoning we have also referred to the decision of this court in Commissioner of Income Tax Vs. Govindaraja Reddiar, , deciding the situation in the same manner, in regard to the phrase "any sum payable". In view of the above position more than settled, the question needs no further discussion. The other question reproduced above relates to the Miscellaneous Petition No. 2 of 1991 taken up by the Revenue for consequential rectification on the basis of the above statutory consequences. The Revenue submitted, as would be found from the order of the Tribunal dated March 14, 1991, that as a result of the retrospective amendment of Section 43B by the Finance Act, 1989, there is a mistake of law, apparent on the face of the record. The Tribunal, in the circumstances substituted paragraph 7 of the original Tribunal order by way of rectification. This was with regard to the sales tax dues for the month of December, 1983. The said substitution is as follows :

" 7. As regards the sales tax due for the month of December, 1983, which was admittedly paid only in January the amended provision of Section 43B will clearly operate to deny the assessee the benefit of revenue deduction in respect of the sales tax attributable to the month of December, 1983. We, therefore, decline to interfere in the matter. The related ground of the assessee's appeal is, therefore, dismissed."

4. Learned counsel for the assessee before us urged that the application for rectification was not a remedy in view of the fact that the Tribunal had reached and recorded a finding relating to the applicability of the amended law.

5. We find from the statement of case, it is clearly observed that this question does not arise out of the order of the Tribunal in Miscellaneous Petition No. 2 (Coch.) of 1991. However, the Tribunal has proceeded to observe that the Delhi High Court is in favour of the Revenue whereas the Patna High Court is in favour of the assessee. Therefore, in the context of the conflicting decisions of the High Courts on the interpretation of the amendment to Section 43B of the Act, the rectification ordered spells out a question of law.

6. In our judgment, in view of the position settled not only by the judgment in Income Tax References Nos. 141 and 142 of 1987 (Commissioner of Income Tax Vs. A. Kunjumytheen Kunju,), but also by the earlier judgment of this court referred to therein -- Commissioner of Income Tax Vs. Govindaraja Reddiar,), it cannot be said that the issue has any element of debate in view of the judgment of the jurisdictional High Court as far as the Tribunal is concerned. In fact it cannot be said that the Tribunal was not justified in rectifying the appellate order.

7. For the above reasons, we answer both the questions in the affirmative, in favour of the Revenue and against the assessee.

8. A copy of the judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.