(2003) 03 KL CK 0098

In the High Court Of Kerala

Case No : IT Ref. No. 159 of 1999

P.O. Basheer APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 14-03-2003

Acts Referred:
Income Tax Act, 1961 — Section 256(2)

Citation : (2004) 192 CTR 188 : (2005) 142 TAXMAN 48

Hon'ble Judges : K.S. Radhakrishnan, J;A.K. Basheer, J

Bench : Division Bench

Advocate : C. Kochunny Nair and Dale P. Kurien, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Judgement

K.S. Radhakrishnan, J.—The Tribunal, Cochin Bench in compliance with the direction of this Court in OP No. 387 of 1998 referred the following question u/s 256(2) of the Act. The question reads as follows :

"Whether, on the facts and in the circumstances of the case, there was material on record before the Tribunal to come to its conclusion in confirming addition of Rs. 1,70,000 in the hands of the assessee in spite of the fact that Mrs. Ayishabi had admitted that she had invested the funds in the immovable property ?"

2. The above question arises out of the Income Tax assessment of the assessee for the asst. yr. 1987-88. During the previous year relevant to the asst. yr. 1987-88 the assessee had purchased property near Calicut Corporation office jointly with his wife Smt. Ayishabi for a consideration of Rs. 3,40,000. The assessee had invested his half share which was made out of the drawings from the firm M/s Haji P.T. Ahmedkoya and that he had not made any investment in respect of the other share of his wife. Further, it was also stated by the assessee that his wife had other source of income and, that assessee''s wife was assessed to Income Tax and wealth-tax. Assessee''s wife had also sent a letter stating that she had received gifts from abroad and the investments were made out of the same. The AO did not accept the claim that investment was made with separate

funds received by way of gifts by the assessee''s wife. He had proceeded to make the assessment on the basis that the sum of Rs. 1,70,000 invested in the name of the assessee''s wife represented unexplained income which was to be brought to tax in his hands. Accordingly, Rs. 1,70,000 was added as income under ''other sources''. In appeal the CIT deleted the addition on the ground that there was nothing to show that he had made investment in the property in the name of his wife. Revenue then took up the matter in appeal before the Tribunal. The Tribunal had elaborately considered the claim regarding receipt of gifts which would show that part of the consideration was paid by the assessee''s wife. The Tribunal noticed that it was not a case where purchase was made by the wife independently or part of the same would have come from the hands of the assessee himself and the balance amount must have come from the assessee''s wife.

3. The assessee later filed OP No. 387 of 1988 u/s 256(1) of the Act to direct the Tribunal to draw up a statement of case and refer the following questions of law.

"(1) Whether the finding of the Tribunal that the claim of the assessee''s wife that she received gifts from her cousins cannot be accepted, is based on proper, and correct appreciation of materials on evidence on the record ?

(2) Whether the finding of the Tribunal that the bank account does not support the claim of the receipts of the gifts is based on materials on evidence on the record ?

(3) Whether, on the facts and circumstances of the case, there was material on record before the Tribunal to come to its conclusion in confirming addition of Rs. 1,70,000 in the hands of the assessee in spite of the fact that Mrs. Ayishabi had admitted that she had invested the funds in the immovable property ?

(4) Whether the Tribunal is right in law in holding that, based on the materials on record, the ITO has established a nexus between the assessee and the sum invested by the assessee''s wife in order to confirm the addition as unexplained income of the assessee ?

(5) Whether the Tribunal''s conclusion that the AO had brought on record enough materials to show that Shri C.P. Basheer and Shri C.P. Salam are not persons in such affluent circumstances to give so large amounts to their cousin sister is based on any materials in the record especially having regard to the fact that both the said persons were not summoned by the AO while completing the assessment nor any materials were produced by the Department before any of the authorities to disprove the fact ?"

Though there were five questions raised before this Court, the assessee wanted only question No. 3 to be referred. Accordingly this Court directed the Tribunal to refer question No. 3. We are of the considered view question No. 3 raises no question of law. The assessee wanted question No. 3 to be referred and this Court allowed the prayer. When the case came up for hearing the counsel has addressed arguments on question No. 4, which has never been referred. Argument notes were submitted which relates to question No. 4. Question No. 3 is purely a question of fact. Question No. 4 has not been referred to us. Hence we are unable to answer the question and the reference is accordingly dismissed.

