(2009) 11 KL CK 0027

In the High Court Of Kerala

P.P. Ummerkutty APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Income Tax Act, 1961 — Section 158BC

Citation : (2011) 201 TAXMAN 162

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The connected appeals arise from a common order of the Tribunal disposing of the appeal and cross-objection filed by the assessee and the department against the orders of the Tribunal, Cochin Bench.

2. The assessment involved is a block assessment made on the assessee for the period 1987-88 upto 21-3-1997, the date of search. The assessee was not available on the date of search and consequently, his sworn statement was recorded after three days from the date of search, that was on 24-3-1997. The assessing officer, after considering the sworn statement and the evidence furnished by the assessee, completed the assessment making substantial addition for the entire period. The assessment completed u/s 158BC of the Income Tax Act, 1961 was subjected to appeal before the Commissioner (Appeals). Based on the evidence produced and after hearing the assessee, the appeal was allowed in part, against which the department filed appeal and assessee filed cross-objection to delete addition sustained by the Commissioner (Appeals).

3. The Tribunal, in the impugned common order, partly sustained the addition and partly, reversed the order of the Commissioner (Appeals). Against the order of the Tribunal, these appeals are filed by the assessee as well as the revenue.

4. We have heard standing Counsel appearing for the appellant and advocate Sri.

K.M.V. Pandalai, appearing for the asseessee.

5. After hearing both sides and after going through the orders of the Tribunal and the lower authorities, we notice that the questions raised are purely finding of facts rendered by the Tribunal based on evidence and materials produced. In the assessees appeal, two questions are raised, one pertaining to addition of interest income of Rs. 4,43,700 for the year 1997-98 and other pertaining to the addition of Rs. 19,72,000 deleted by the Commissioner (Appeals), but restored by the Tribunal. So far as addition of interest is concerned, the contention of the assessee is that the assessee has paid advance tax and included the interest income in the return filed for the assessment year 1997-98. However, we notice from the finding of the Tribunal that on the date of search, the assessee has not accounted the interest income received from the bank. The assessee has not furnished Form No. 15H for non-deduction or short deduction before the concerned banking authority and no tax was deducted at source by the bank. Besides this, even though the assessee had received substantial interest income for the immediate preceding year for which the assessee has filed return, the assessee did not include any interest income in the return so filed. The Tribunal, therefore, agreed with the assessing officer that the assessee has not accounted the interest income in the accounts maintained, as found on the date of search. Therefore, the addition was restored by reversing the order of the Commissioner (Appeals). Even though the assessee reiterated the same argument before us, we are unable to accept the same because exclusion of income upto the date of search is permissible only if time for filing return for the assessment year is not already over and the income was found to be accounted by the assessee. The requirement of Section 158BA(3) would be said to be satisfied only if the income is found recorded in the accounts maintained by the assessee. Since the assessee has not accounted the interest income as on the date of search and since the advance tax paid has not been proved to be on the interest income received by the assessee from the bank, which was not subjected to TDS by the bank, the Tribunal rightly reversed the order of the Commissioner (Appeals). In respect of the addition of Rs. 19,72,000, the claim by the assessee that it represents agricultural income received by him in the course of several years from the agricultural land of his brother in Karnataka State is concerned, we find that the assessee never put up his case of availability of agricultural income from agricultural lands of his brother, in the first sworn statement furnished after 24-3-1997. In fact, the source of income furnished in the affidavit filed is a letter which does not speak of any agricultural income that was due from the assessee to his brother. Further, it was held that the claim of the assessee that he started repaying the agricultural advances lying with him does not merit consideration in the light of the above letter wherein he speaks only of the repayment or adjustment of this amount against the amount for purchase of a flat. In the circumstances, in the absence of any tenable evidence, the Tribunal concluded that the addition of Rs. 19,72,000 is justified. The assessees case that the land purchased by his brother on 3-1-1986 yielded income of Rs. 1,85,000 within

three months from the date of purchase, is difficult to believe. Therefore, we find no ground to interfere with the decision of the Tribunal on this issue as well.

6. So far as the questions raised in the appeal of the revenue are concerned, we notice that all questions raised pertain to deletions made by the Commissioner (Appeals) and confirmed by the Tribunal. The two lower authorities, on the facts, accepted the explanations offered with regard to certain amounts. We do not want to disturb these findings and conclusions. In our view, the questions raised in both the appeals are only findings on facts and no question raised is a substantial question of law.

7. Accordingly, both the appeals are dismissed.

