
(1996) 06 KL CK 0075

In the High Court Of Kerala

Case No : Income-tax Reference No's. 19 to 22 of 1987

Seematti Trust

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-06-1996

Acts Referred:

Citation : (1997) 226 ITR 493

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

Bench : Division Bench

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

Judgement

V.V. Kamat, J.—These eight references relate to the affairs of a trust named Seematti Trust as sought to be contended. The following two questions are to be answered in Income Tax References Nos. 19 to 22 of 1987 :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in merely holding that considering the contentions and the conclusions of the hon"ble High Court, the order of the Income Tax Officer has to be restored ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in not passing an order conformably to the decision of the hon"ble High Court of Judicature of Kerala in its findings ?"

2. Income Tax Reference Nos. 23 to 26 of 1987 relate to rectification orders dated January 8, 1985, in regard to which the following question is required to be answered :

"Whether, on the facts and circumstances of the case, it could be stated that there was no mistake apparent from the face of the records to be rectified in the orders dated January 8, 1985, passed u/s 260(1) of the Income Tax Act, 1961 ?"

3. Counsel for the parties placed before us that the decision in Income Tax References Nos. 19 to 22 of 1987 would automatically be consequential to the

decision in Income Tax References Nos. 23 to 26 of 1987. We also feel similarly. Therefore, all these references are taken up for decision and are being decided by this common judgment.

4. The proceedings came up before the Income Tax Officer on the basis of jointly furnished Income Tax returns by three persons relating to certain income received by them from business activity. The contention was that the income was received by them as trustees appointed under a trust in pursuance of a trust deed. The further contention was that the income was received by these three assesseees for and on behalf of and for the benefit of 13 beneficiaries.

5. Consequently, their claim was that they should be assessed as representative assesseees within the meaning of Section 160(1)(iv) of the Income Tax Act, 1961. The Income Tax Officer considered the question and found that the trust was without permission of a principal civil court of original jurisdiction and therefore violative u/s 7 of the Indian Trusts Act, 1882. He further held that the immovable properties that came to be transferred to the three assesseees styling them as trustees were transferred without executing registered documents in regard thereto and this was a further violation of Section 5 of the Indian Trusts Act, 1882. He further held that there was no proper and legal document which could be considered as the instrument of trust by reason of which it could be held that the three assesseees could be understood to have been appointed as trustees satisfying the requirements of Section 160(1)(iv) of the Income Tax Act, 1961, entitling them as a consequence to the benefit of Section 161 of the Act. As a consequence, the Income Tax Officer completed the assessment on the basis of treating the three assesseees as a "body of individuals".

6. The first appellate authority, the Appellate Assistant Commissioner, held otherwise holding that the relief u/s 161 could be available to the three persons as representative assesseees.

7. The record shows that the Revenue Department preferred appeals to the Tribunal along with the filing of cross-objections not for any particular relief but by way of support to orders of the first appellate authority.

8. Essentially, in the first instance for the assessment year 1972-73, the Tribunal decided the situation by its order dated March 21, 1977, and for subsequent years by a separate order dated March 21, 1978. It appears that the Tribunal held that a trust was created and that the trustees would have to be understood as representative assesseees in accordance with the provisions of Section 160(1)(iv) of the Act.

9. The proceedings are now finally and conclusively settled by the previous order of this court in Income Tax Reference No. 83 of 1978 Commissioner of Income Tax Vs. Seematti Trust,), by the judgment dated July 23, 1984, a copy of which is at annexure-D1 at page 63 of the print.

10. This court considered the basic and jurisdictional aspect as to whether there

was a valid trust. In the judgment in fact it was found to be the only point arising for consideration and so whether the trustees were entitled to be assessed as representative assesseees. The answer to this question obviously concludes the situation as to whether the approach of the Income Tax Officer as stated above has been endorsed and stamped by this court as a final situation.

11. This court has turned down the trust deed (annexure-A therein), dated May 12, 1971, firstly on the ground that the founder, Shri S. Veeriah Reddiar, could not be said to be the owner, with lawful authority to create the trust. This court has also further found referring to the preamble to the deed that it does not find mention of the intention of beneficiaries in handing over the inventories to Reddiar or the intention of Reddiar to receive them. This court has also emphasised that the beneficiaries are the partners of four firms whose assets are listed in the inventories as well As four minors who had been admitted to the benefits of the concerned partnerships. This court has also emphasised that the assets received and handed over to Reddiar are stated to have been received as "nominees of the respective beneficiaries". In the ultimate analysis, this court has held that there was no authority to create a trust in respect of the properties as well as for the benefit of the beneficiaries.

12. As regards the identity of the trust assets the question also has been considered to record a conclusion by referring to the consideration by the Income Tax Officer to reach a conclusion that apart from the items of inventories the sum of Rs. 70,000 could not be understood to form part of the trust properties. In the result, this court has already recorded a final and conclusive situation that there was not a valid trust and therefore as a consequence the trustees were not entitled to be assessed as representative trustees. Learned counsel was candidly fair to accept this position as a situation of finality, there being no challenge in regard thereto.

13. In the light of the conclusiveness, the matter came up before the Income Tax Appellate Tribunal thereafter which is sought to be impugned for an answer to the questions reproduced at the outset.

14. The above discussion would show that the conclusiveness of the situation has closed the matter as far as the assesseees are concerned with regard to any attempt to reopen the questions completely covered thereby. This was in fact what was attempted before the Income Tax Appellate Tribunal, Cochin Bench, when the matter appeared in pursuance of the order of this court referred to above. The Tribunal after setting out the factual matrix observes that normally, in view of the judgment of this court, the prayer of the Department has only to be allowed to restore the order of the Income Tax Officer whereby the three assesseees are regarded as a "body of individuals".

15. It was vehemently contended by learned counsel before us and we find that it was also contended before the Tribunal with equal force that when the High Court held that there was no valid trust, the situation going to the very root of

the existence of the trust, it cannot be said as a consequence that a "body of individuals" came into existence as a direct consequence in regard thereto and if that be so automatically, it cannot result in the process of assessment in the name of the assessee as a "body of individuals". Learned counsel further contended that such a direct conclusion on the basis of the finding that there is no trust would be an unjustified jump.

16. This attractive argument of learned counsel before us ignores as to what is the situation of finality in exact terms. There cannot be any gainsaying, at the cost of repetition, that the judgment of this court is a situation of finality with regard to the question that was posed before it and answered by it consequently.

17. The question is as follows (page 772) :

"The only point which arises for consideration is whether or not there was a valid trust and, if so, whether the trustees were entitled to be assessed as representative assesseees."

and it would at once be clear that the question alone contains a posture of a consequence to a situation that there was no valid trust. In other words, this court by its earlier judgment has also answered the situational consequence that the trustees or rather the three assesseees would have to be understood as a "body of individuals".

18. The submission to hear the cross-objection afresh is also properly held to be as one without any merit, the same having been already dismissed by the Tribunal and there being nothing in the earlier order of this court with regard to the requirement of hearing the cross-objections again as sought to be contended.

19. In our judgment, the question has reached finality and the consequence that the assesseees are required to be treated as a "body of individuals" has passed the stage of any consideration in regard thereto.

20. The above reasoning would immediately bring us to answer the questions referred in Income Tax References Nos. 19 to 22 of 1987, Both questions are answered in the affirmative, in favour of the Revenue and against the assessee.

21. Income Tax References Nos. 23 to 26 of 1987 relate to the contention requiring rectification as regards the order of the Tribunal dated January 8, 1985, passed by the Income Tax Appellate Tribunal, Cochin Bench, in pursuance of the order of this court dated July 23, 1984, in Income Tax Reference No. 83 of 1978 (Commissioner of Income Tax Vs. Seematti Trust,), referred to above.

22. The question that expects answer in these references is as follows :

"Whether, on the facts and circumstances of the case, it could be stated that there was no mistake apparent from the face of the records to be rectified in the orders dated January 8, 1985, passed u/s 260(1) of the Income Tax Act, 1961 ?"

23. It was sought to be contended in support of the prayer for rectification of the

order dated January 8, 1985, that there was no justification in setting aside the order of the Appellate Assistant Commissioner. In fact, the submission was directly contrary to what became settled as a situation of finality in view of the earlier judgment of this court. Going through the order refusing rectification {annexure "A", dated August 8, 1985), we find that the Tribunal was more than justified. The Tribunal has also considered the scope of the powers of rectification to find that the mistake apparent has to be an obvious and patent mistake.

24. Once the situation is that when the basic and jurisdictional question has assumed finality by reason of the earlier judgment of this court, restoration of the order of the Income Tax Officer would be a legitimate consequence.

25. For the above reasons, the question to be answered in these references also shows that there was no mistake to be rectified because the order was a necessary consequence.

26. For the above reasons, the question in these references is answered in the affirmative, in favour of the Revenue and against the assessee.

27. A copy of the judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench, for passing consequential orders.