(2025) 02 KL CK 1282

In the High Court Of Kerala

Case No : Income Tax Appeal No. 136 Of 2009, 74 Of 2011

The Commissioner Of Income-Tax APPELLANT

Vs

P.P.Jose (Late) RESPONDENT

Date of Decision : 17-02-2025

Acts Referred:
Income Tax Act, 1961 — Section 40(A)(3), 132, 143, 143(3), 158BC, 244A(1)(b), 260A

Citation : (2025) 02 KL CK 1282

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Easwaran S., J

Bench : Division Bench

Advocate : Jose Joseph, Christopher Abraham, Navaneeth.N.Nath, Susie B Varghese, Anil D. Nair, Mathew Bob Kurian, Telma Raju, Christina Anna Paul Sangeeth Joseph Jacob, Aravind Sreekumar, Edathara Vineeta Krishnan, P.K.Biju, K.T.Thomas

Final Decision : Dismissed

Judgement

Dr. A.K.Jayasankaran Nambiar, J.

1. Both these Income Tax Appeals by the revenue impugn the order dated 27.02.2004 in ITA No.31/Coch/2003 and ITA No.32/Coch/2003 respectively. The Appellate Tribunal by the aforesaid order had disposed the appeals preferred by the assessee and the Revenue against the order of the First Appellate Authority in an appeal preferred by the assessee against an order of assessment under Section158BC read with Section 143 of the Income Tax Act for the block period 01.04.1989 to 23.12.1999.

2. The brief facts necessary for the disposal of these Income Tax Appeals are as follows:

Consequent to a search and seizure action under Section 132 of the Income Tax Act at the business and residential premises of the respondent assessee on 23.12.1999, an assessment for the block period from 01.04.1989 to 23.12.1999 was completed against the respondent assessee under Section 158BC read with

Section 143(3) of the Income Tax Act on 31.12.2001. The Assessing Authority had by the said order rejected the books of accounts maintained by the assessee during the aforementioned block period and had proceeded to estimate the income of the assessee for the entire block period on the basis of the average running stock of the assessee for the various years covered by the block period. The rejection of the books of accounts was based on material that was unearthed during the search on 23.12.1999 and statements recorded from various persons including the assessee's son, who was in charge of the business of the assessee, and certain customers, who had visited the business premises of the assessee. The undisclosed income generated for the entire block period was computed at Rs.5,86,52,026/- and tax thereon was demanded from the respondent assessee.

3. Aggrieved by the order of assessment, the assessee preferred an appeal before the First Appellate Authority. The First Appellate Authority while susbtantially confirming the demand of the Assessing Officer, modified the demand by fixing the undisclosed income at two times the running stock of the assessee during the various assessment years covered in the block period, as against three times the running stock that was taken by the Assessing Officer. The First Appellate Authority also restricted the said addition to only five of the 10 years covered by the block period on the finding that incriminatory material recovered during the time of search pertained only to those five years and not to the other years covered under the block period. The five years in respect of which the undisclosed income was directed to be computed were 1995-1996, 1997-1998, 1998-1999, 1999-2000, and 2000-2001. The First Appellate Authority also confirmed the disallowance made by the Assessing Officer in relation to the expenditure claimed under Section 40(A)(3) and added back these amounts to the calculation of the undisclosed income. The assessment order was, therefore, modified by the First Appellate Authority only to a limited extent.

4. It was aggrieved by the order of the First appellate authority that both the respondent assessee as also the revenue preferred appeals before the Income Tax Appellate Tribunal. The Appellate Tribunal by the order impugned in these appeals upheld the finding of the First appellate Authority that the estimation could be done only in respect of those years where there was material to suggest that there was a suppression of the income by the assessee. The Tribunal however deprecated the practice of estimating the undisclosed income based on the average running stock method that was adopted by the Assessing Authority as also the First Appellate Authority. Relying on the submissions made on behalf of the assessee, the Appellate Tribunal directed the estimation of undisclosed income to be computed at the rate of six times the suppressed sales turnover for the respective years in which material was available with the Department to suggest actual suppression. The Tribunal also proceeded to restore the gross profit that was taken by the Assessing Authority at the rate of 18.59% for all the assessment years in which suppression was detected. On the aspect of disallowance under Section 40A(3) of the Income Tax Act, the Tribunal found that a disallowance under Section 40A(3) could not be considered while completing a

block assessment since the said disallowance would ordinarily be considered by an Assessing Authority at the time of regular assessment for each of the assessment years covered by the block period. In arriving at the said conclusion, the Tribunal relied on its own earlier judgment in the case of Eastern Retreads (I) Limited [66 TTJ 695] where it had held that the disallowance in a regular assessment under Section 40A(3) cannot be considered again while framing a block assessment. In effect, therefore, the Tribunal modified the order of the First Appellate Authority granting substantial relief to the respondent assesee.

5. The effect of the Tribunal order has been captured in the proceedings dated 30.04.2004 of the Deputy Commissioner of Income Tax, Central Circle, Thiruvananthapuram, who was required to pass consequential orders giving effect to the order of the Tribunal. It is seen from a perusal of the said order that the undisclosed income was computed in the manner suggested by the Tribunal, only for the years 1995-1996, 1998-1999, 2000-2001, and 1993-1994. In the computation of tax, the total tax payable was found to be Rs.17,25,111/-, and after giving credit to the tax of Rs.53,58,000/-already paid by the assessee, he was held entitled to a total refund of Rs.37,23,709/- inclusive of interest under Section 244A(1)(b) of the Income Tax Act.

6. It is aggrieved by the said order of the Tribunal that the revenue has come up before us in these appeals raising the following substantial questions of law.

1. Whether, on the facts and in the circumstances of the case and also in the light of the Kerala High Court decisions relied on by the Revenue before the Tribunal,-

i) the Tribunal is justified in not taking the running stock method adopted by the Assessing Officer in fixing the sales turnover?

ii) should not the Tribunal have adopted the sales turnover at three times of the running stock?

2. Whether, on the facts and in the circumstances of the case and in the light of the observation of the Accountant Member in his separate order that "estimation of turnover in the case of a Jewellery business on the basis of average running method is not unjust or unfair, estimating the sales turnover on the average running method is a time tested method in estimating the sales turnover in this line of business" the Tribunal is right in law and fact and also justified in restricting the addition to 6 times the suppressed sales found for the respective assessment years and is not the method in estimating the sales turnover,

i) Against law and practice?

ii) Against the decision of the Kerala High Court?

iii) Conflicting in view of the difference indicated by the Accountant Member in his separate order?

3. Whether, on the facts and in the circumstances of the case and also in view of

the separate order of the Accountant Member on the question of the method in estimating the sales turnover, can the view expressed in the main order be said to be the order of the Tribunal at all?

4. (a) Whether, on the facts and in the circumstances of the case and for the reasons given in the order of the Tribunal, the Tribunal is right in law and fact in deleting the disallowance made under section 40A(3) of the I.T. Act?

b) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that disallowance under section 40A(3) cannot be made in block assessments and accordingly deleting the entire disallowance?

c) Whether, on the facts and in the circumstances of the case and also for the reasons given. in the appeal memorandum and grounds raised, the Tribunal is right in law and fact in holding that the disallowance under Section 40A(3) cannot be made in block assessments because these are reflected in the accounts as revealed from seized records? And is not the finding, wrong, baseless, against facts and unsupported by materials?

5. Whether, on the facts and in the circumstances of the case and also in the light of the reasons given in the appeal Memorandum and the grounds raised, the Tribunal is justified in confirming the deletion of a sum of Rs.2,71,689/- relating to assessment year 1994-03 by the Commissioner of Income tax (Appeals) on the ground that a higher disallowance of Rs.6,34,087/- was made in the regular assessment and are not the finding and the deletion against facts highlighted in the memorandum of appeal and hence wrong and baseless?

6. Whether, on the facts and in the circumstances of the case and also for the reasons given in the Memorandum of appeal and the grounds raised, the tribunal is right in law and fact in allowing set off of a sum of Rs.50,00,000/ declared under VDIS.

In addition to the above questions of law the following question was also allowed to be incorporated as an additional question of law in the IT Appeal vide our order dated 07.03.2023.

7. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the estimation of undisclosed income for the block period could be made only for those years for which incriminating materials are seized and is not such a finding and approach is against law and the decision of the Hon'ble High Court of Kerala in Hotel Meriya's case (332 ITR 537)?

7. We have heard Sri. Jose Joseph the learned Standing counsel for the Income Tax Department and the learned Senior counsel Sri.Anil D. Nair assisted by Smt.Telma Raju the learned counsel for the respondent assessee.

8. On a consideration of the rival submissions and before going into the merits of the submissions made before us by the learned counsel, we might point out that under the provisions of Section 260A of the Income Tax Act, an appeal lies before

this Court only on substantial questions of law that arise from the order of the Income Tax Appellate Tribunal. The question as to what qualifies as a 'substantial question of law' for the purposes of Section 260A has been considered by the Supreme Court in a catena of judgments over the last five decades and more. The principles that can be culled out from a perusal of the said judgments briefly stated are as follows:

i. An inference of fact from the recitals or contents of a document is a question of fact. However the legal effect of the terms of the document is a question of law. Construction of a document involving the application of any principle of law is also a question of law. Therefore, when there is a misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law. However all questions of law do not become substantial questions of law.

ii. A question of law, the answer to which affects the rights of the parties to the litigation, will be a substantial question of law, if it is not covered by the specific provision of law or binding precedents and involves a debatable legal issue.

iii. A substantial question of law will also arise if the legal position is clear, either on account of express provisions of law or binding precedents but the court below has decided the matter, either ignoring or acting contrary to such legal principles.

vi. Findings of facts arrived at by the court below will not ordinarily be interfered with unless

(a) the court below has ignored material evidence or acted on no evidence,

(b) the court had drawn wrong inferences from true facts by applying the law erroneously or

(c) the court has wrongly cast the burden of proof.

v. For a substantial question of law to arise from the order of the Tribunal, it must have been raised before or decided by the Tribunal.

(See: Chandrabhan (Deceased) Through Lrs. And Others v. Saraswati and Others [2022 SCC Online SC 1273], Chunilal v Mehta & Sons v Century Spg. & Wvg. Mills - [AIR 1962 SC 1314], Santhosh Hazari v. Purushottam Tiwari (Deceased) by Lrs. [(2001) 3 SCC 179], Vijay Kumar Talwar v. Commissioner of Income Tax, Delhi [(2011) 1 SCC 673], Meenakshi Mills Ltd v CIT - [AIR 1957 SC 49], C.I.T. (Central), Calcutta v. Daulat Ram Rawatmull [1973 3 SCC 133], The Commissioner of Income Tax, Bihar and Orrisa, Patna v. S.P. Jain [1973 3 SCC 824], Commissioner of Income Tax, Calcutta v. Biju Patnaik [(1986) 3 SCC 310], M/s.Lalchand Bhagat Ambica Ram v. Commissioner of Income-tax [AIR 1959 SC 1295], and Hero Vinoth (Minor) v. Seshammal [(2006) 5 SCC 545].

9. On an application of the above principles to the facts arising in the instant appeals, we find that merely because the Appellate Tribunal had chosen a

different method for estimation of the undisclosed income of the assessee during the block period, from the methodology that was adopted by the Assessing Authority and the First Appellate Authority, it cannot be said that the findings of the Appellate Tribunal give rise to a substantial question of law. This is more so because the methodologies adopted by the Assessing Authority and the First Appellate Authority on the one hand, and the Appellate Tribunal on the other, are merely different modes by which an estimation is done of the extent of the suppression of income detected by the authorities. Since any estimation involves an element of guess work, one cannot state with any degree of conviction that a particular methodology is the only one that can be legally adopted in a given case. We also find that a Division Bench of this Court in C.C Jacob v. State of Kerala [1997 Taxman.com 1659 (Kerala)] has found that, the choice of methods to be adopted for the purposes of estimation of turnover is a matter for an Assessing Authority to decide on the basis of the materials on record. It will always depend on the facts and circumstances of each case. It was also found that in the case of an assessee carrying on the business of jewellery, whose business premises are inspected by the Department and the difference in weighment and the number of items of gold ornaments is found to be minimal, as compared to the stock held on the date of inspection, or where the difference in the number of items is not very substantial, the method of determining turnover on average running stock basis is not reliable. Thus, there is no fixed method for arriving at the undisclosed income in cases such as the present, and it all depends upon the subjective satisfaction of the adjudicating authority concerned. We are therefore not persuaded to find that the methodology adopted by Appellate Tribunal was legally incorrect, or that the finding of the Appellate Tribunal on the said issue gives rise to a substantial question of law for our consideration in these appeals preferred by the revenue.

10. As regards the questions raised in relation to the disallowance under Section 40A(3) of the Income Tax Act, we find that the Appellate Tribunal had only relied on its own earlier order in Eastern Retreads (I) Limited [66 TTJ 695] while arriving at a conclusion in favour of the respondent assessee. It is not in dispute before us that the revenue did not choose to carry the said order of the Appellate Tribunal in appeal before this Court in any proceedings. Under the said circumstances, we cannot sustain an argument to the contrary by the revenue in these appeals before us.

Resultantly, these appeals fail and are accordingly dismissed.

