(2006) 08 KL CK 0060

In the High Court Of Kerala

Case No : ST Rev. Case No. 78 of 2004

Valley Estates APPELLANT

Vs

Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Kerala Agricultural Income Tax Act, 1991 — Section 35(1), 35(6), 39(3), 39(6), 41

Citation : (2007) 209 CTR 430 : (2007) 292 ITR 120

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : John Ramesh, for the Appellant; V.V. Asokan, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether the Tribunal was justified in sustaining the assessment as one completed within time. The agricultural Income Tax assessment for the asst. yr. 1991-92 was completed by the AO vide order dt. 25th Feb., 1995 and a copy of the same was served on the petitioner on 19th Dec, 1995. Relying on the judgment of this Court in Agrl. ITO and Anr. v. K. Joseph N. Jacob (1995) 3 KTR 224, petitioner contended before the Tribunal that the assessment should not only be completed within two years as prescribed u/s 39(6) of the Act, the assessment order should be served within two years as stated therein. We do not think there is any need for us to consider whether the assessment order should be served on the assessee within two years from the date of filing of the return for its validity u/s 39(6) of the Act. This is because the Tribunal has found that the petitioner did not furnish the return within the time prescribed u/s 35(1) of the Act. Even though the return filed was a belated return, the AO completed the assessment u/s 39(3) of the Act, based on the return filed and after hearing the petitioner. Counsel for petitioner contended that once assessment is completed u/s 39(3) of the Act based on the return, time-limit u/s 39(6) is applicable. Learned special Government pleader, on the other hand, contended that Explanation to Section 39(6) makes it clear that if return is not filed u/s 35(1) of the Act, then the time-limit for completion of assessment is as provided u/s 41 of the Act. Explanation to Section 39(6) is as follows:

Explanation : The time-limit of two years mentioned in Sub-section (6) shall apply only in the case of assessee who has filed return and it shall run from the date of receipt of the return by the Agrl. ITO. In the case of those who are liable to submit return under Sub-section (1) of Section 35, but have failed to furnish such return, the time limit prescribed u/s 41 shall apply.

2. The latter part of the above Explanation makes it very clear that those assessees who are liable to submit return under Sub-section (1) of Section 35, but who fail to do so, the time-limit prescribed for assessment will be that provided u/s 41 of the Act. Since the petitioner is found not to have filed the return within the time specified u/s 35(1), but was liable to file return under the said section, the limitation for assessment is the one available u/s 41 and not u/s 35(6) of the Act. Even though the Tribunal has not referred to the Explanation, we find that the order of the Tribunal on limitation is sustainable under Explanation to Section 39(6) of the Act. The assessment is, therefore, completed within the time-limit and so far as the dispute on other matters of assessment is concerned, it stands remanded by virtue of the order of the first appellate authority. We, therefore, sustain the order of the Tribunal on limitation and consequently dismiss the ST revision case.

