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(1999) 152 CTR 298 : (1997) 224 ITR 103

High Court Of Kerala

Case No: O.P. No''s. 224, 225 and 1552 of 1993

Commissioner of Income Tax		APPELLANT
	Vs	
Smt. K.C. Agnes and Others (Legal heir of late P.J. Thomas)		RESPONDENT

Date of Decision: April 2, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 256(2), 45

Citation: (1999) 152 CTR 298 : (1997) 224 ITR 103

Hon'ble Judges: T.R. Ramachandran Nair, J; K.K. Usha, J

Bench: Division Bench

Advocate: P.K.R. Menon and N.R.K. Nair, for the Appellant; C. Kochunni Nair, for the Respondent

Judgement

K.K. Usha, J.
These petitions filed u/s 256(2) of the Income Tax Act, 1961, relate to the assessment years 1983-84, 1984-85 and 1985-86. The respondents are the legal heirs of an individual assessee. The original assessee purchased land admeasuring 3.73 acres in Fort Cochin in February-March, 1982, for a consideration of Rs. 21.26 lakhs which would work out at the rate of Rs. 5,700 per cent. Out of the above, the assessee sold 1.21 acres in March, 1982. From the remaining portion, 60 cents was sold to two minor daughters of Mohammed Salim Pasha of Bombay under a sale deed dated February 25, 1983, for a consideration of Rs. 8,000 per cent. Another 1.10 acres of land was sold during the year relevant to the assessment year 1984-85 to two minors as well as to Smt. Annamma Abraham for a consideration of Rs. 8,000 per cent. Remaining 82 cents of land was sold during the period relevant for the assessment year 1985-86 to the wife of Mohammed Salim Pasha at the rate of Rs. 8,000 per cent.

2. Pursuant to a search u/s 132 of the Income Tax Act conducted at the residential premises of Salim Pasha at Bombay as well as his business premises, certain receipts and documents were seized. After elaborate enquiries and taking sworn statements, the Income Tax Officer came to the conclusion that the land was sold at the rate of Rs. 12,951 per cent and not at the rate of Rs. 8,000 as declared by the assessee. The Income Tax Officer assessed the capital gains on the above basis for each assessment year. On appeal, the Commissioner of Income Tax (Appeals) affirmed the above finding. The assessee filed second appeal before the Tribunal. The Tribunal accepted the argument of the assessee that the agreement in English dated March 1, 1983, seized during the search was not meant to be acted upon and higher price was shown therein to facilitate resale for higher value or to get higher compensation if acquired by the corporation. The application filed by the Revenue u/s 256(1) of the Income Tax Act seeking reference of eight questions was rejected by the Tribunal.

3. We heard the arguments on both sides. It was contended on behalf of the assessee that the questions sought to be referred are in relation to findings of fact. No question of law arises and, therefore, the petitions are to be dismissed.

4. Taking into consideration the entire facts and circumstances of the case, we are of the view that questions of law do arise in these cases. It may not be necessary to refer all the questions as required by the Revenue. The Tribunal shall state a case and refer the following questions of law for the opinion of this court u/s 256(2) of the Income Tax Act, 1961 :

" 1. Whether, on the facts and in the circumstances of the case, was the Tribunal right in law and fact in holding that in spite of the assessee acknowledging receipt of Rs. 5,98,999 in the agreement cited supra, it can be said that only a sum of Rs. 2,00,000 was actually received by him on March 1, 1983, which was accounted for in his books on the same day ?

2. Whether, on the facts and in the circumstances of the case, was the Tribunal justified in law and fact in holding that the land measuring 2.52 acres were not actually sold for a sum of Rs. 12,591 per cent as alleged by the Revenue ?

3. Whether, on the facts and in the circumstances of the case, was the Tribunal right in law in holding that the agreement dated March 1, 1983, was not acted upon either in relation to the rate of Rs. 12,951 per cent or in relation to penal clauses found therein ?

4. Whether, on the facts and in the circumstances of the case, was the Tribunal right in law and fact in finding that it is not established that the sum of Rs. 1,36,060 has gone to Sri P. J. Thomas or was intended to be paid to him ?"

5. Communicate a copy of this judgment under the seal of this court and the signature of the Registrar to the Income Tax Appellate Tribunal, Cochin Bench, for information and compliance.