(1991) 01 KL CK 0044

High Court Of Kerala

Case No: Income-tax Reference No. 49 of 1988

Commissioner of Income Tax		APPELLANT
	Vs	
Century Cashew Products		RESPONDENT

Date of Decision: Jan. 2, 1991

Acts Referred:

- Income Tax Act, 1961 - Section 147, 40(A)(7)

Citation: (1991) 188 ITR 612

Hon'ble Judges: K.S. Paripoornan, J; K.P. Balanarayana Marar, J

Bench: Division Bench

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

Judgement

K.S. Paripoornan, J.
At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following two questions for the decision of this court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the reopening of the assessment was not valid ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the payment to the Group Gratuity Scheme which was not recognised by the Commissioner is an allowable deduction ?"

2. The respondent is an assessee to Income Tax. The assessee is a Hindu undivided family running business of manufacture and export of cashew kernels. We are concerned with the assessment year 1977-78 for which the accounting period ended on March 31, 1977. The original assessment for the year 1977-78 was completed on December 9, 1980. It was so done on a total income of Rs. 97,350. It was reopened u/s 147(b) of the Income Tax Act. The reason for reopening the assessment was that purchase tax is not payable for imported raw nuts after September 6, 1976, in view

of the amendment effected in the Central Sales Tax Act and the provision made by the assessee for the period subsequent to September 6, 1976, in the sum of Rs. 1 lakh was not allowable as a deduction. But it was allowed in the original assessment. The Income Tax Officer proposed to reopen the assessment to disallow the provision so made by the assessee for the period subsequent to September 6, 1976. The Income Tax Officer also disallowed the payment made to an unrecognised gratuity fund amounting to Rs. 84,559 since the Group Gratuity Scheme was not recognised by the Commissioner. The Income Tax Appellate Tribunal accepted the plea of the assessee that the assessment was sought to be reopened only to add back the purchase tax liability and, when that plea did not survive, the question regarding the payment to. the Group Gratuity Scheme could not have been made the subject-matter of assessment u/s 147(b) of the Act. In other words, the Income Tax Appellate Tribunal held that the reopening of the assessment was not valid. Since the sole ground on which the notice u/s 147(b) of the Act was issued did not survive due to the direction of the Inspecting Assistant Commissioner not to add back the purchase tax liability, the Appellate Tribunal further held that, in view of the decision in Commissioner of Income Tax Vs. High Land Produce Co. Ltd., he assessee is entitled to deduction of the gratuity amount. It is thereafter that the two questions of law formulated hereinabove have been referred to this court for decision.

3. We heard counsel for the Revenue and also counsel for the assessee. It is true that the assessment was sought to be reopened to add back the purchase tax liability. The Inspecting Assistant Commissioner directed the Income Tax Officer not to add back the purchase tax liability. However, in the reassessment, the Income Tax Officer disallowed the amount of Rs. 84,559 being contribution to the Group Gratuity Scheme which was allowed in the original assessment. The Appellate Tribunal was of the view that the basis for reopening the assessment being only the addition of purchase tax liability, the Income Tax Officer was not justified in disallowing the gratuity provision in the reopened assessment. We are of the view that the Appellate Tribunal was in error in holding that the assessing authority cannot bring to charge items of income which had escaped assessment other than or in addition to that item which had led to the issue of the notice. Once a reassessment proceeding was initiated under the prevailing law, the reassessment need not be confined to the particular item of income which alerted the Income Tax Officer to reopen the assessment. In this view of the matter, we answer question No. 1 referred to us in the negative, against the assessee and in favour of the Revenue. We hold the reopening of the assessment as valid.

4. The Appellate Tribunal relied on Commissioner of Income Tax Vs. High Land Produce Co. Ltd., to hold that the provision for gratuity is allowable. In that case, this court was concerned with the assessment year 1970-71. We are now concerned with the assessment year 1977-78 for which the accounting period is April 1, 1976, to March 31, 1977. In view of the later statutory provision made in Section 40A(7) of the

Income Tax Act with retrospective effect by the Finance Act of 1975, the decision in Commissioner of Income Tax Vs. High Land Produce Co. Ltd., may not be applicable to the case on hand. The question whether the payment to the Group Gratuity Scheme is allowable should be decided in the light of Section 40A(7)(b)(i) of the Income Tax Act. The Appellate Tribunal has not considered that aspect. We, therefore, hold that the decision of the Appellate Tribunal holding that the payment to the Group Gratuity Scheme is an allowable deduction is an error. We decline to answer question No. 2 referred to us, but we direct the Income Tax Appellate Tribunal to restore the appeal to file and decide the matter afresh in accordance with law and in the light of Section 40A(7)(b)(i) of the Income Tax Act.

5. The reference is answered as above.

6. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.