

**(1994) 10 KL CK 0055**

**High Court Of Kerala**

**Case No:** O. P. No"s. 926 and 921 of 1994-S and O. P. No. 12196 of 1993

COMMISSIONER OF Income Tax

APPELLANT

Vs

A.M. ZAINALABDEEN MUSALIAR.

RESPONDENT

**Date of Decision:** Oct. 21, 1994

**Acts Referred:**

- Income Tax Act, 1961 - Section 256, 40A

**Citation:** (1995) 123 CTR 51 : (1995) 212 ITR 20

**Hon'ble Judges:** T. L. Viswanatha Iyer, J; T. L. Vishanatha Iyer, J

**Bench:** Division Bench

**Judgement**

T. L. VISWANATHA IYER J. - All the three cases arise out of a common order of the Appellate Tribunal. The ~~assessment~~ year concerned is 1978-79. The first of the questions on which reference is sought relates to the addition made in respect of the alleged bogus purchase of raw cashew of 50,469 pounds. According to the Department, the addition should have been of the order of Rs. 7,48,377 at the rate of Rs. 15.77 per pound of cashew. Though this was the addition made by the Income Tax Officer, the Commissioner (Appeals) reduced it to Rs. 4.5 lakhs for certain reasons stated by him. Both sides appealed to the Tribunal, the assessee against the sustenance of Rs. 4.5 lakhs and the Department against the reduction of the addition to Rs. 4.5 lakhs. The Tribunal, for the reasons stated by it in its order, dismissed both the appeals in relation to this matter and sustained the addition of Rs. 4.5 lakhs. The Revenue feels aggrieved and has sought reference of the question as to whether the Commissioner as well as the Tribunal were justified in sustaining only the addition of Rs. 4.5 lakhs while it should have been Rs. 7,48,377.

We have been taken extensively through the order of the Tribunal. The Tribunal has noted that two of the four reasons which had been urged before the Commissioner (Appeals) for deleting the addition under this head had been accepted by the Commissioner and acceptance of those grounds has not been challenged in the appeal before the Tribunal by the Department. The Tribunal found that there was a

practice of making local purchases from persons who were described as unauthorised dealers. This was established with reference to the evidence in the case, particularly instances of assessment made in relation to other purchasers of cashew in the area. The Tribunal also found that there was suppression of out-turn of earlier years, a finding which had been rendered by the Commissioner in its order and which had not been challenged in appeal before the Tribunal. The Tribunal went into the other aspects of the matter and came to the conclusion that a substantial quantity of the cashew had been purchased by the assessee from authorised dealers. It was only in relation to the rest that the question of suppression arose. The Tribunal discussed the materials and evidence before it and came to the conclusion that the addition of Rs. 4.5 lakhs will meet the ends of justice and accordingly dismissed the appeals. We do not find any question of law arising out of this part of the Tribunals order. The said finding, as stated earlier, is made on an appreciation of the evidence in the case and based on materials. It cannot be said that it is either perverse or unreasonable or unsupported by any materials. No question of law is, therefore, liable to be referred out of this part of the Tribunals order.

The second ground on which the Revenue seeks reference relates to the finding rendered in paragraph 47 of the Tribunals order. The closing stock of the African raw nuts of 1,592 bags according to the assessee has been valued by including purchase tax of Rs. 16. The assessee wanted a reduction of Rs. 16 towards purchase tax from the closing stock value. The Tribunal did not render any ~~♦~~finding on this question inasmuch as it was liable to be looked into by the assessing authority to ascertain whether any purchase tax element had been really included in the value of the closing stock. It accordingly directed the Income Tax Officer to verify and allow the assessee to amend the closing stock value if the submission of the assessee was found correct. If as contended by the assessee the closing stock value adopted contained the element of purchase tax, it could not be said that it was the correct value of the closing stock. The Tribunal was therefore justified in directing the Income Tax Officer to look into the matter. We do not find any question of law arising out of this direction which according to us is fully justified by the contention raised in the case.

The third point on which reference is sought relates to the payment of Rs. 50,000 to one Rajan by an uncrossed bearer cheque. The assessee had a case in the first instance that the payment had been made by a crossed cheque, but it was subsequently disclosed that the payment was really made by a bearer cheque. The Tribunal held that the payment was genuine. The Tribunal was also satisfied about the identity of the payee, Rajan, who, though not produced before the Income Tax Officer because of his alleged death in a scooter accident, was found to be a genuine person. Evidently, the Tribunal gave the assessee the benefit of rule 6DD(j) of the Income Tax Rules and allowed deduction of Rs. 50,000. We are of the view that a question of law does arise out of this finding of the Appellate Tribunal and,

accordingly, we direct the Income Tax Appellate Tribunal to state a case and refer the following question of law for the determination of this court u/s 256(2) of the Income Tax Act, 1961, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in finding that the assessee was entitled to a deduction of Rs. 50,000 paid to Rajan and that the provisions of section 40A(3) do not stand in the way of the payment being allowed ?"

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.