

**(1999) 10 KL CK 0053**

**High Court Of Kerala**

**Case No:** O.P. No's. 13061, 13720 and 20241 of 1999

Commissioner of Income Tax

APPELLANT

Vs

A. Geeripal

RESPONDENT

**Date of Decision:** Oct. 4, 1999

**Acts Referred:**

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

**Citation:** (2000) 243 ITR 375

Hon'ble Judges: Arijit Pasayat, C.J; K.S. Radhakrishnan, J

Bench: Division Bench

Advocate: P.K.R. Menon and George K. George, for the Appellant; P. Balachandran, for the Respondent

**Judgement**

Arjit Pasayat, C.J.

Original Petitions Nos. 13061 and 13720 of 1999 are in the list today. As Original Petition No. 20241 of 1999 is similar in nature, the same is being taken up at the request of learned counsel for the parties.

2. A refusal by the Income Tax Appellate Tribunal, Cochin Bench (in short "the Tribunal"), to refer the questions posed by the Revenue for opinion u/s 256(1) of the Income Tax Act, 1961 (in short "the Act"), has led to the filing of these petitions. The questions are as follows :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in confirming" the deletion of the disallowance of interest in respect of gold loan ?

2. Whether, on the facts and in the circumstances of the case and also in the light of the decisions of the Supreme Court in Swadeshi Cotton Mills Co. Ltd. Vs. Commissioner of Income Tax, Uttar Pradesh (No. 1), and Lachminarayan Madan Lal Vs. Commissioner of Income Tax, West Bengal, , is the expenditure wholly and

exclusively for the purpose of business and should not the Tribunal have considered the expenditure on the above lines, since the same having been disallowed by the Income Tax Officer also on the above lines ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that there was a liability on the part of the assessee to pay interest to the parties concerned as at the end of the accounting year ?"

3. The dispute has arisen in the following background : The assessee is a partnership firm engaged in the business of jewellery and as dealers in gold ornaments, silver ornaments and precious stones. For the three assessment years, namely, 1988-89, 1989-90 and 1990-91, the Assessing Officer disallowed the claim of interest of Rs. 47,428 for 1988-89, Rs. 70,025 and Rs. 70,551 for the two periods of 1989-90, and Rs. 1,38,707 for 1990-91 in respect of gold loans holding that the method of computation of interest was detrimental to the assessee's business.

4. Interest was claimed in respect of certain gold loans taken by the assessee from the relatives of its partners. When the gold loans were taken, they were taken at the rate prevailing on the date of receipt. When the gold loans were returned, the accounts of the concerned partners were debited at the original value at which the loans were taken. However, for the purpose of allowing interest, a different method was adopted by which the value of the loan was taken at the rates prevailing as at the end of the year. This method was followed as per mutual agreement between the parties. The Assessing Officer was of the view that by paying interest on the artificial credit balances, the assessee had parted with a portion of its own commercial profit in favour of the relatives of the partners who are the persons who advanced the loans.

5. On appeal, the Commissioner of Income Tax (Appeals) (for short "the CIT(A)"), deleted the addition holding that it is not open to the officer to disallow interest on the ground that the method of computation of interest was detrimental to the assessee's business. The decision of the Commissioner of Income Tax (Appeals) was confirmed by the Tribunal in the second appeal filed by the Department. Thereafter, the Revenue filed a petition u/s 256(1) of the Act with a prayer to refer the questions, which was turned down.

6. Learned counsel for the Revenue submitted that the Assessing Officer was authorised in law to lift the veil of the mala fide agreement made to reduce the commercial profits. The arrangement was not bona fide and, therefore, the addition was proper. Learned counsel for the assessee submitted that the assessee was bound by the agreement made. It was of the view that the arrangement made would be in its interest, and there is no question of any detriment to the assessee's business.

7. The question whether a particular amount claimed was bona fide and/ or was an attempt to affect the commercial profits is essentially one of fact. The first appellate

authority as well as the Tribunal found that the agreement entered into by the assessee with some persons cannot be said to be one which was not bona fide. Merely because the assessee adopted a different method for the purpose of allowing interest on gold loans, that will not make the agreement suspect or vulnerable. There was a contractual liability to pay interest on a particular basis. It could not be shown by the Revenue that the arrangement was intended to part with a portion of its own commercial profits. The conclusion being factual, no question of law arises:

8. The original petitions are accordingly dismissed.