Commissioner of Income Tax Vs A.M. Zainalabdeen Musaliar

Income-tax Reference No. 119 of 1998

Court: High Court Of Kerala

Date of Decision: March 12, 2001

Acts Referred:
Income Tax Act, 1961 â€" Section 256(1), 256(2)

Citation: (2001) 168 CTR 243 : (2001) 250 ITR 534

Hon'ble Judges: S. Sankarasubban, J; A. Lekshmikutty, J

Bench: Division Bench

Advocate: P.K.R. Menon, for the Appellant; C. Kochunny Nair and Dale P. Kurien, for the Respondent

Judgement

S. Sankarasubban, J.
This Income Tax reference is at the instance of the Revenue. The following questions have been referred to this

court, u/s 256(2) of the Income Tax Act, 1961 :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition in its entirety ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal had acted on materials or evidence before it to hold that the figures

given before the sales tax authorities could not be the correct figures and that since there were only two figures before the Tribunal and that one

figure was not based on any proper material the other figure is the only figure which it may adopt ?

2. The facts of the case are as follows : The assessee is an individual deriving income mainly from cashew export. For the assessment year 1981-

82, the original assessment was made with the addition of Rs. 45,650 as profit on unaccounted sales of cashew kernels totalling to 415 bags. For

the addition, the Assessing Officer relied on certain documents found in the course of an inspection conducted by the Intelligence Wing of the Sales

Tax Department. Against that assessment, an appeal was filed and the Commissioner of Income Tax (Appeals) set aside that assessment directing

the Assessing Officer to make a fresh assessment after affording the asses-see an opportunity to explain the discrepancy.

3. Thereafter, the Assessing Officer caused enquiries to be made with the sales tax authorities and found that in the course of the sales tax

proceedings, the assessee had prepared a trading profit and loss account for the entire accounting year and that account differed materially from

the accounts submitted by the assessee along with the return of income. The Assessing Officer requested the assessee to explain the discrepancy.

Not being satisfied with the explanation of the assessee, the Assessing Officer proposed to make an addition of Rs. 7,70,816. Even though an

appeal was filed before the Commissioner of Income Tax (Appeals), that was dismissed. Against that a second appeal was filed before the

Tribunal. In the second appeal, the first point made out by the assessee''s representative was identification of the excess stock added by the

Assessing Officer. According to the assessee''s counsel, the entire sum of Rs. 7,70,816 represented excess closing stock of kernels only. The

Tribunal referred to the statement given before the sales tax authorities and given with the Income Tax return.

4. After going into the details of the two statements, it is found that the opening stock of cashew nuts as given before the sales tax authorities is

1994 bags as against 778 bags. In respect of the local purchase of nuts, the difference between the two figures is only of seven bags. Since the

assessee had shown excess opening stock both in kernels and in nuts, the value of such excess opening stock fixed at Rs. 5,67,801 was given

credit and only the balance of Rs. 7,70,816 was added to the value of the closing stock. The contention was that the entire sum of Rs. 7,70,816

represented excess closing stock of kernels only. Thus after going into the facts in the case and the evidence adduced, the appeals were allowed

and the orders of the lower authorities were set aside. It is challenging the above orders that the present reference is made.

5. After hearing counsel for the Revenue and learned counsel for the assessee, we find that so far as the present case is concerned, no question of

law arises. The question was whether the statements produced before the sales tax authorities should have been accepted by the Tribunal or not.

According to us, this is a question of mixed law and fact. As was observed in Commissioner of Income Tax, Karnataka Vs. M/s. Bedi and

Company Private Limited, , the High Court will not address itself to recording findings of facts, unless the subject-matter of the question referred to

it by the Tribunal, either under Sub-section (1) or Sub-section (2) of Section 256 of the Income Tax Act relates to the perversity of the findings

arrived at by the Tribunal. The question has to be distinguished from a mixed question of fact and law, which also requires consideration and

discussion of facts, but does not warrant returning findings of facts. In K. Ravindranathan Nair v. CIT [2001] 247 ITR 178, the Supreme Court

held as follows (headnote) : ""The Tribunal extensively analysed the documents placed before it and came to the conclusion that the ten units run by

the assessee constituted a single business. It was because a part of the business had been affected by labour disputes, that for the industrial health

of the business as a whole, it was thought just and necessary that the industrial dispute in that one part of the business be stopped. This was the

purpose for which the payment was made and it was, therefore, incurred for the purposes of the business"". It further held as follows (page 181) :

The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact-finding authority. A decision on the facts of the

Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on the facts is

perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal"". So far as the

questions of law in the present case are concerned, we do not find any question of law referred as stipulated by the Supreme Court.

6. Hence, we answer the questions in the positive and in favour of the assessee.