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High Court Of Kerala

Case No: IT Ref. No''s. 1 to 6 of 1993

COMMISSIONER OF INCOME TAX		APPELLANT
	Vs	
B. RAMANUJAM THAMPI and Others		RESPONDENT

Date of Decision: Oct. 9, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 260, 271

Citation: (1997) 143 CTR 90

Hon'ble Judges: V. V. Kamat, J

Bench: Division Bench

Judgement

V. V. KAMAT, J. :

These six references are brought before us by the Revenue against the six partners-assessees related to the firm M/s National Cashew Co., Trivandrum. These six partners-assessees are also concerned with the purchase of grape garden near Hyderabad by the sale deed dt. 16th November, 1966 for a total consideration of Rs. 2,95,000 allegedly forming a partnership, the sale deed, in fact, mentioning them individually as vendees. Out of the six partners, two were adults and remaining four were minors represented by their guardian-father. The consideration amount of Rs. 2,95,000 was drained out through the firm M/s National Cashew Corporation, Trivandrum. In fact, this Trivandrum firm had an account styled as Hyderabad Account showing debits of the payments and in spite thereof, correspondingly the grape garden was not shown as an asset of the firm. With regard to the asst. yr. 1969-70, the balance sheet as on 31st March, 1969 shows only Rs. 11,071 as due to the Trivandrum firm. This was as against the opening balance of Rs. 3,45,063. This revealed that the bulk of payments were made in the accounting year in question. Correspondingly, in the books of the grape garden accounts, each of the partners - these six assessees - were credited with the profits of grape garden divided equally between them.

2. Initially, the original assessment in respect of these six partners-assessees was made without noticing the income from the grape garden. However, the ITO, while examining the assessment proceedings of one of them - Shri Mohandas Rajan - found that the interest of these partners-assessees became apparent. This Mohandas Rajan is the assessee as one of the six partners.

3. As a result of this, the assessments of all were reopened and each of them came to be additionally assessed at an amount of Rs. 57,790. This amount came to be reduced to Rs. 45,350 before the appellate authority. Needless to state that simultaneous penalty proceedings under s. 271(1)(c) of the IT Act, 1961 were initiated resulting into the imposition of penalty amounting to Rs. 50,000 each by the IAC.

4. The Tribunal as an appellate authority, cancelled the imposition of penalty. The contention of the assessee was accepted. The contention was that the concealment was by the firm and not by the partners. The rival contention of the Revenue was that they were not partners, but were co-owners. The authorities were kept busy in finding out certain distinctions between co-ownership and partnership, proceeding to apply the principles in regard thereto. The Tribunal held that the assessees were partners and not co-owners.

5. This question was brought before this Court resulting into an order of remand to the Tribunal for considering the question in the right perspective.

6. The Tribunal reaching the finding that the income from the grape garden represented the assessees income actually and, in fact, the assessees had given the colour of agricultural income to their otherwise taxable income. In the process of reasoning, the Tribunal reached the conclusion that the six assessees were co-owners. It was contended by the Revenue that the question, whether the assessees are partners or co-owners, was really unnecessary.

7. In the process of reasoning, after remand, the Tribunal reconsidered the whole matter. Observing that this Court not having pointed out a single instance of error, it would be open to reconsider the whole matter, the entire matter was examined with regard to the justification of the imposition of penalty under s. 271(1)(c) of the IT Act. It is observed that different authorities had taken different figures and, in fact, had not rejected the explanation offered by the assessees. It was further observed that the assessees might have earned the income estimated by them. In these circumstances, a conclusion was reached that no penalty was exigible and the orders of the authorities imposing penalty were cancelled.

8. It is in these circumstances the Tribunal has referred as many as five questions expecting our answer as sought to be urged by the Revenue. We need not reproduce them because on taking into consideration the material on record, we feel that the real question is the justification for cancellation of the orders of penalty on the basis of the material on record. We propose to combine the purport of all the

five questions to effectively deal with the situation. We find that the real question to be answered is unnecessarily and improperly split into as many as five questions. We frame the following question as a result thereof :

"Whether, on the basis of the material on record, the Tribunal would be justified in cancelling the orders of penalty under s. 271(1)(c) of the IT Act, 1961 on the ground that different authorities had taken different figures, had not rejected the explanations offered by the assessees making it a situation of probability that the assessees might have earned the income estimated by them ?"

The Tribunal has also referred a question as a conditional one depending on the answer to question No. 5 originally framed. For answering the said question, only to that extent, for the purpose of this judgment, we reproduce the said question (question No. 5) out of which flows the question framed as urged by the assessees. They are as follows :

"5. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the assessee to raise a fresh ground about the legality of the penalty order in an order passed under s. 260(1) of the IT Act, 1961 ?

In case the answer to question No. 5 above is in the affirmative, whether the IAC has jurisdiction to levy penalty in the case of the assessee for the asst. yr. 1969-70 ?"

We have to answer these questions.

9. In fact, for the same assessees for the next asst. yr. 1970-71, this Court in COMMISSIONER OF Income Tax Vs. R. LEELA VASANTH NAIR AND OTHERS., had an occasion to consider the justification of penalty under s. 271(1)(c) of the Act. This Court has taken the view that there was no firm at all and even if assuming that the grape garden belonged to a firm, it was irrelevant to consider as to whether or not the firm concealed its income because the said income admittedly was the agricultural income and hence, not liable to be assessed under the IT Act. This Court has further observed that both in the orders of assessment and penalty proceedings, the assessees boosted up the income from the grape garden and thereby concealed the real income liable to be assessed. The situation is no different in any way.

10. In fact, when the said decision of this Court was placed for our consideration on the last occasion - on 25th September, 1996 - we were told by the learned senior tax counsel that a rectification application is already made by the Revenue before the Tribunal. This was because the decision on the rectification application would have rendered the present proceedings infructuous had it been considered favourably for the Revenue.

11. Necessary papers of the said rectification application are placed before us. We find that the judgment in Leela Vasanth Nairs case (supra) is dt. 6th April, 1987 and the rectification application appears to have been rejected thereafter by the order

dt. 3rd September, 1987. Going through the order, it appears to us that the rectification application is rejected with an observation that the error is not apparent and there was some scope for a different impression regarding the High Courts order. All that we can say in the matter of this state of affairs is that this is unfortunate.

12. The Tribunal at least should have taken the trouble of going through the decision of this Court, which was the basis for rectification application.

13. Be that as it may, this Court has taken the view on the similar situation relating to the acts of the assessees with regard to inflating the accounts of the grape garden so that no tax should be leviable on account of the said income being agricultural income. This is the common feature and the proceedings of the references under our consideration get completely covered as a result of the said decision of this Court.

14. For all the above reasons, the reframed question is answered in the negative - in favour of the Revenue and against the assessee. With regard to the question framed at the instance of the assessees reproduced hereinbefore, the decision of the apex Court in Commissioner of Income Tax, Bangalore Vs. Smt. R. Sharadamma, is the complete answer to the position that the IAC has all jurisdiction to deal with the proceedings under s. 271(1)(c) of the IT Act, 1961. This question is, therefore, answered in the affirmative in favour of the Revenue and against the assessees.

15. Lastly, we find IT Ref. Nos. 1 and 6 of 1993 that the assessees have expired. This Court (of which one of us -myself - dictated the judgment) in IT Ref. No. 13 of 1991 decided on 23rd August, 1996 [since reported as CIT vs. S. V. Doshi (1997) 141 CTR (Ker) 123] proceeded in a situation where the assessee had expired and efforts in the direction of bringing the legal heirs were not successful since the function of the reference Court is to answer the questions referred, taking the assistance of the counsel appearing in the matter. Even earlier, in a similar situation, in IT Ref. Nos. 35 and 36 of 1990 decided on 5th July, 1996, [since reported as CIT vs. K. P. Varoo (1996) 135 CTR (Ker) 266] the same course was adopted and we continue to adopt the same in regard to these two references. Consequently, we direct the Tribunal to adopt the necessary proceedings to bring the heirs and legal representatives on record and to pass consequential orders to enable the Revenue to proceed with the recovery as a consequence thereof.