SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Zacharia Vs. State of Kerala

Zacharia Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/722362

Court : Kerala

Decided On : Oct-27-1975

Reported in : [1977]39STC221(Ker)

Judge : P. Govindan Nair, C.J. and; T. Kochu Thommen, J.

Appeal No. : T.R.C. No. 62 of 1974

Appellant : Zacharia

Respondent : State of Kerala

Advocate for Def. : The Government Pleader

Advocate for Pet/Ap. : C. Sankara Menon, Adv.

Disposition : Petition allowed

Judgement :

T. Kochu Thommen, J.

1. The only question which arises for consideration in the tax revision case is whether the assessee is entitled to deduct a sum of Rs. 32,904.12, which he received as the sale consideration for the stock-in-trade, furniture, fixtures and goodwill of his business which he sold in terms of an agreement dated 30th April, 1968. The Sales Tax Appellate Tribunal, Trivandrum, by its order dated 24th April,

1974 (in Tribunal Appeal No. 470/71), held as follows :

But on going through the terms of the agreement we find that the business at Kottayam was not transferred to the purchaser as a whole. Only the stock-in-trade, furniture and fixtures and goodwill were transferred to the purchaser. Other assets and liabilities such as sundry debts and sundry credits, etc., were retained by the appellant. Hence it is clear that there was no transfer of the business as a whole. We therefore find that the Sales Tax Officer has rightly included the amount of Rs. 32,904.12 in the taxable turnover of the appellant for the year. It is accordingly confirmed.

2. It is this part of the order of the Tribunal that is now challenged in this tax revision case. According to the assessee, his business as a whole was transferred to the buyer under the agreement dated 30th April, 1968. He, therefore, claims exemption from tax in respect of the sale proceeds which he realised under the said agreement. Rule 9(g) of the Kerala General Sales Tax Rules, 1963, says :

In determining the taxable turnover, the amounts specified in the following Clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer :....

(g) all amounts realised by a dealer by the sale of his business as a whole.

3. According to the Tribunal, the assessee had not sold his business as a whole. It has stated in the order :

Other assets and liabilities such as sundry debts and sundry credits, etc., were retained by the appellant.

4. If this finding of the Tribunal was found on evidence, the conclusions arrived at by the Tribunal would be unassailable. We shall now read the relevant part of the agreement dated 30th April, 1968.It says :

5. This is the only provision in the agreement which talks of retention of any liability. This agreement does not contain any provision to suggest that any asset is retained by the seller. In our opinion, the finding of the Tribunal that other assets

were retained by the seller is totally devoid of any basis. The mere fact that the seller had undertaken to settle liabilities which had accrued prior to the sale of the business would not by itself show that the seller had not transferred the business as a whole. So long as there is nothing to suggest that any part of the assets was retained by the seller or any amounts standing to the credit of the business were taken over by the seller, it cannot be suggested that the business as a whole was not transferred. In our opinion, the finding of the Tribunal on this question is erroneous. We, therefore, allow the tax revision case and set aside the order of the Sales Tax Appellate Tribunal, Trivandrum. We make no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com