Kuttookaran Machine Tools Vs. Assistant Commissioner of Income-tax and anr.

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SooperKanoon Citation : sooperkanoon.com/729512

Court : Kerala

Decided On : Mar-18-2008

Reported in : [2009]313ITR413(Ker)

Judge : T.R. Ramachandran Nair and; C.N. Ramachandran Nair, JJ.

Acts : Income Tax Act, 1961 - Sections 271(1)

Appeal No. : I.T.A. No. 262 of 2002

Appellant : Kuttookaran Machine Tools

Respondent : Assistant Commissioner of Income-tax and anr.

Advocate for Def. : P.K.R. Menon and; George K. George, Advs.

Advocate for Pet/Ap. : P. Balachandran and; Preetha S. Nair, Advs.

Disposition : Appeal dismissed against the assessee

Judgement :

C.N. Ramachandran Nair, J.

1. Heard Sri P. Balachandran, senior counsel appearing for the assessee and Sri P.K.R. Menon, senior standing counsel appearing for the Revenue. The question

raised in the appeal is whether the Tribunal is justified in confirming the penalty levied on the assessee under Section 271(1)(c) of the Income-tax Act for the assessment year 1989-90. On going through the Tribunal's order and after hearing counsel, we find that the assessee made bogus claims of investment allowance and depreciation in respect of machinery which were not purchased, installed or commissioned during the previous year. The assessee has no case that it had in fact purchased and installed the machinery in respect of which benefits were claimed under the statute. On the other hand, the assessee's case is that this is a mistake committed by the auditor and so much so the assessee is not liable to be subjected to penalty. In support of his contention, counsel also relied on the decision of the Supreme Court in T. Ashok Pai v. CIT : [2007]292ITR11(SC) . We do not find any merit in the case because benefits are claimed in the return. Though prepared by the auditor for the assessee, it was for the assessee to ensure that wrong claims are not made by the practitioner or auditor. We, therefore, reject the assessee's case of immunity from penalty. Since the penalty levied is minimum leviable under Section 271(1)(c) of the Act there is no scope for reduction in quantum of penalty also. The appeal, therefore, fails and is dismissed.