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Court : Kerala

Decided On : Aug-06-2004

Reported in : [2005]142TAXMAN33(Ker)

Appeal No. : O.P. No. 4540 of 1998 (M) 6 August 2004

Appellant : Vasant Gordhandas

Respondent : Cit

Advocate for Pet/Ap. : PGK Warrier, K.S. Menon & P. Balakrishnan, *for the Petitioner* P.K. Ravindranatha Menon, N.R.K. Nayar & George K. George, *for the Respondent.*

Judgement :

1. Petitioner is an assessee to income-tax on the file of the second respondent. The assessment of the petitioner for the year 1991-92 (previous year ended 31-3-1990) was completed as per order dated 18-3-1996 (Exhibit P 1). Against the said order, the petitioner filed a revision (Exhibit P2) under section 264 of the Income Tax Act before the first respondent. The grievance of the petitioner is that the said respondent did not consider the matter with reference to the contentions taken in the revision and passed an order dated 11-11-1997 (Exhibit P3) rejecting the revision.

2. Learned counsel appearing for the petitioner submits that the petitioner is engaged in certain business activities as well as a member of the Cochin Stock Exchange. Counsel submits that in the assessment the petitioner contended that he had suffered a loss to the tune of Rs. 2 lakhs from the business but the second respondent without any justification had treated a sum of Rs. 1,00,000 as the loss on speculation of business along with a sum of Rs. 10,000 as expenditure for the same. Counsel submits that the petitioner had maintained books of account with respect to his business from which it can be easily found that the loss was on account of trading business. Counsel further submits that the second respondent instead of verifying the books and accounts while completing the assessment had proposed to disallow a sum of Rs. 1,00,000 as loss on speculation along with a sum of Rs. 10,000 as expenditure and he had acted on the basis of the proposal stating that the petitioner had agreed to the said addition. Counsel submits that in fact the petitioner had to agree for the addition only for the reason that the second respondent has threatened the petitioner with prosecution steps, if the petitioner did not agree to such addition. Counsel submits that in spite of the fact that the petitioner had stated the aforesaid circumstances before the first respondent in the revision petition and there is no due consideration of the same in Exhibit P3 order. Counsel further submits that in the instant case there was absolutely no justification for disallowing any portion of the loss as loss on speculation. Counsel also took me to the provisions of Explanation 2 to section 28 of the Act which provides that speculation business is different from other business and also to section 43(5) and provisos (b) & (c) thereto regarding the definition of speculative transactionsand submits that the petitioners case would not fall under such speculative transaction. In short the submission of the counsel is that the petitioner did not conduct any speculation business at all.

3. Shri George K. George, learned standing counsel, Government of India (Taxes), on the other hand, submits that there is no scope for a revision at all having regard to the fact that the petitioner had voluntarily agreed for an addition of Rs. 1,00,000 as loss on speculation business and Rs. 10,000 towards the expenditure for the same and that the assessing authority had completed the assessment solely on the basis of the said agreement. Standing counsel further submits that the Commissioner has also rejected the revision for that reason and there is

absolutely no scope for interference by this court in this proceedings. Standing counsel pointed out that the second respondent had directed the petitioner to show separately the trading loss as well as the speculation loss with reference to the books of account maintained by him and that it is only in the circumstances that the petitioner has not chosen to do so, the question of estimation has arisen and the assessment was completed in the manner stated above.

4. I have considered the rival submissions and perused the impugned order. I find from the impugned order that what is stated by the standing counsel is justified, for, the petitioner was asked to produce separate details with regard to the loss claimed by the petitioner. There is no dispute that the petitioner did not produce any such details. The stand of the petitioner is that accounts are available and that it is for the assessing authority to peruse the same and arrive at the conclusion which has not been done. But it is an admitted fact that the assessing authority has proposed to disallow a sum of Rs. 1,00,000 towards loss on speculation and Rs. 10,000 towards the expenditure on that count and the petitioner had accepted the same. The case later put forward before the revisional authority is that the said agreement was on account of the threat of prosecution steps from the second respondent. I am afraid, such a contention cannot be accepted when the petitioner, if he is aggrieved by the assessment order passed by the second respondent, had got a right of appeal before the first Appellate authority and before the Tribunal apart from an appeal before this court. The petitioner had allowed the assessing authority to complete the assessment based on the proposal. In such circumstance, it cannot be said that the first respondent had committed a serious error in dismissing the revision and I find no illegality in the order impugned in this Writ Petition. Hence I find no merit in this Writ Petition.

Writ Petition is accordingly dismissed.