

Cit Vs. P.K. Narayanan

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Court : Kerala

Decided On : Sep-17-2004

Reported in : [2005]142TAXMAN51(Ker)

Appeal No. : IT Ref. Nos. 34 to 36 of 1998 17 September 2004 A.Ys. 1986-87 to 1988-89

Appellant : Cit

Respondent : P.K. Narayanan

Advocate for Pet/Ap. : P.K. Ravindranatha Menon & George K. George, *for the Revenue* T.M. Sreedharan & S. Ananthakrishnan, *for the Respondent*

Judgement :

S. Sankarasubban, J.

These references arise from the order of the Income Tax Appellate Tribunal, Cochin Bench in ITA Nos. 868,869 and 610 (Coch)/1990-91. Assessment years are 1986-87,1987-88 and 1988-89. The facts of the case are as follows :

2. Assessee is a partner in certain partnership firms. The dispute which was taken before the Appellate Tribunal is regarding the inclusion of income derived from the business of M/s. Archana Jewellery in the hands of the assessee. According to the revenue, the business of M/s. Archana Jewellery was ostensibly carried on by one

A.N. Chellappan. But it was really the business of the assessee. This inference was drawn on the basis of certain materials seized in the course of a search under section 132 of the Income Tax Act in the premises of the assessee. Such a view had been held by the revenue for and from the assessment year 1979-80. The revenue drew support from the order of the Tribunal dated 14-3-1986 in the assessee's own case in which it was held that the assessee was the real owner of the business of M/s. Archana Jewellery and that Chellappan was only a name lender. For the assessment years in question, the assessing officer relied on his findings for the earlier years and also on the findings of the Tribunal. For the same reason, the assessment was upheld by the First Appellate Authority.

3. As already stated in the appeals against the assessment years, the Tribunal took the view that the assessee was owner of M/s. Archana Jewellery. But in the proceedings which arose under the penalty, the Tribunal by its order dated 21-9-1993 held that M/s. Archana Jewellery did not belong to the assessee. The above decision of the Tribunal is at variance of the earlier decision of the Tribunal in appeal regarding the quantum. At the time when the matter was being dealt with by the Tribunal reference was pending before the High Court against the quantum of appeal and reference was also pending against the appeal with regard to the penalty. It was because of the pendency of the proceedings, these reference have been made to this court. So far as the appeal against the quantum is concerned, it has been disposed of by judgment dated 10-6-1997 and the judgment in P.K. Narayanan v. CIT : [1998]229ITR596(Ker) . The High Court has disposed of the reference saying that there are only question of facts and no question of law arises. Thus, the view of the Tribunal that the assessee was only a name lender was upheld.

4. So far as-the proceedings against the penalty is concerned, it was disposed of by judgment in CIT v. P.K. Narayanan : [1999]238ITR905(Ker) . For the purpose of penalty, it was held that the department has not discharged its function to prove that there has been intentional suppression.

5. After going through the judgment and after hearing both sides, we are of the view that the matter has to be examined by the Tribunal in the light of the above

decisions. The Tribunal took the view that the appeal filed against the quantum has now become final. Since it has now become final, we are of the view that the matter should be considered by the Tribunal in the light of the above decisions.

In the above view of the matter, we direct the Income Tax Appellate Tribunal, Cochin Bench to consider the Income Tax Appeal again taking into account the decisions of this court in P.K. Narayanans case : [1998]229ITR596(Ker) (supra) and P.K. Narayanans case : [1999]238ITR905(Ker) (supra). ITRs are disposed of.

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