

Cit Vs. K.P.V. Shaik Mohamed Rowther and Co. (P) Ltd.

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Court : Chennai

Decided On : Oct-22-2002

Reported in : [2003]130TAXMAN494(Mad)

Appeal No. : Tax Case (Reference) Nos. 75 to 80 of 1998 22 October 2002

Appellant : Cit

Respondent : K.P.V. Shaik Mohamed Rowther and Co. (P) Ltd.

Advocate for Pet/Ap. : Mrs. Pushya Sitharaman, *for the Applicant*

Judgement :

ORDER

N.V. Balasubramanian, J.

At the instance of the revenue, the Income Tax Appellate Tribunal has stated the case and referred the following common questions of law for our consideration under section 256(1) of the Income Tax Act, 1961 :

'1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that rule 6D of the Income Tax Rules does not apply to the Director of the Company and hence no disallowance could be made under 6D in respect of the Travelling Expenses incurred by the Director?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the disallowance towards the commission paid to the employees of the assessee-company should be restricted to Rs. 40,000 only?'

2. The assessment years involved are 1981-82 to 1986-87. The Income Tax Appellate Tribunal considered the appeals preferred by the revenue for the years in question and passed orders on 11-2-1992. The Tribunal has stated the case on 24-6-1997. This court has also taken steps to serve notice on the assessee. As seen from the records, notice has been sent to the assessee on 7-12-2000 by properly addressed, pre-paid and by registered post with acknowledgement due. The acknowledgement has not been received by the Registry. Hence, it has to be presumed that notice has been duly served notwithstanding the receipt of the acknowledgement. (Vide the decision of the Supreme Court in *Basant Singh v. Roman Catholic Mission* : [2002]SUPP3SCR70 . The assessee has not taken steps to enter appearance. In the circumstances, we hold that the assessee has been served.

3. As far as the questions of law referred to us are concerned, we find that so far as the first question of law is concerned, it is covered against the assessee in view of the decision of this court rendered in the assessee's own case *CIT v. K.P.V Shaik Mohamed Rowther & Co. (P) Ltd.* : [2000]242ITR245(Mad) , wherein this court has held that rule 6D(2) of the Income Tax Rules would apply to the Director and Managing Director. Accordingly, we answer the first question of law referred to us in all the Tax Cases in the negative and against the assessee and in favour of the revenue.

4. As far as the second question of law referred to us is concerned, we find that the said question has been concluded in favour of the assessee and against the revenue in the decision rendered in more than own case by this court in *CIT v. K.P.V. Shaik Mohd. Rowther & Co. (P) Ltd.* : [1999]240ITR927(Mad) as well as *K.P.V. Shaik Mohamed Rowther & Co. (P) Ltd.s case* : [2000]242ITR245(Mad) (supra). In the assessee's own case this court has held that the expenditure incurred for commission payment would depend upon the facts arising in that year. This court has held that the Tribunal arrived at the conclusion on the basis of the

facts arising in the assessment years under consideration. It is not brought to the attention of this court by the learned counsel for the revenue that there are changes in the circumstances of the case warranting interference by this court. In the absence of any such material, we hold that the decision of this court rendered in the assessee's own case for the earlier years would squarely apply. Following those decisions, viz., K.P.V. Shaik Mohd. Rowther & Co. (P) Ltd.'s case (supra) and K.P.V. Shaik Mohamed Rowther & Co. (P) Ltd.'s case (supra), we answer the second question of law in all the Tax Cases in the affirmative, in favour of the assessee and against the revenue. However, there will be no order as to costs.

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