Cit, Ernakulam vs P.K. Noorjahan (Smt) on 15 January, 1997

Equivalent citations: AIR1999SC1600, [1999]237ITR570(SC), JT1998(9)SC265, (1997)11SCC198, AIR 1999 SUPREME COURT 1600, 1998 AIR SCW 4121, 1999 TAX. L. R. 167, 1997 (11) SCC 198, (1999) 103 TAXMAN 382, (1998) 9 JT 265 (SC), 1998 (9) JT 265, (1999) 237 ITR 570, (1999) 152 TAXATION 85, (1999) 155 CURTAXREP 509

Bench: S.C. Agrawal, G.T. Nanavati

ORDER

1. These appeals have been filed against She judgment of the Kerala High Court dated November 21, 1979 in ITR Nos. 137 and 138 of 1977 (reported in 1980 Tax LR 726) whereby the following question has been answered by the High Court in favour of the assessee and against the Revenue: Whether on the facts and in the circumstances of the case and on a true interpretation of Section 69 of the Income-tax Act, 1961, the Income-tax Appellate Tribunal is right in law in holding that Section 69 of the Act cannot be invoked in respect of the investments of the assessee and that therefore the addition made for the assessment year 1968-69 or as the case may be 1969-70 should be deleted ?

2. The appeals relate to the assessment years 1968-69 and 1969-70. The assessee is a muslim lady who was aged about 20 years during the previous year relevant for the assessment year 1968-69. On November 15, 1967 she had purchased 16 cents of land in Ernakulam and the amount spent by. her, inclusive of stamp and registration charges, for this purchase was Rs. 34,628/-. On November 27,1968, she purchased another 12 cents of land at Ernakulam and the total investment for this purchase was Rs. 25,902/ - the explanation of the assessee regarding the source of the purchase money for these investments was that the same were financed from out of the savings from the income of the properties which were left by her mother's first husband. The said explanation offered by the assessee was rejected except to the extent of Rs. 2,000/- by the Income-tax Officer who made an addition of Rs. 32,628/- as income from other sources in the assessment year 1968-69 and an addition of Rs. 25,902/- in the assessment year 1969-70. The said orders were affirmed in appeal by the Appellate Assistant Commissioner. The Income-tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'), however, held that even though the explanation about the nature and sources of the purchase money was not satisfactory but in the facts and circumstances of the case it was not possible for the assessee to earn the amount invested in the properties and that by the stretch, of imagination could the assessee be credited with having earned this income in the course of the assessment year or was even in a position to earn it for a decade or more. The Tribunal took the view that although the explanation of the assessee was liable to be rejected. Section 69 of the Act conferred only a discretion on the Income-tax Officer to deal with the investment as income of the assessee and that it did not make it mandatory on his part to deal with the income/as income of the assessee as soon as the latter's explanation happened to be rejected. On that view the Tribunal allowed the appeals of the assessee and cancelled the assessment made by the Income-tax Officer. Thereafter the Tribunal at the instance of the Revenue referred the question abovementioned to the

High Court for its opinion. The High Court has agreed with the said view of the Tribunal and has held that in the instant case it could not be said that the Tribunal was wrong in having differed from the Income-tax Officer and the Appellate Assistant Commissioner in the matter of exercising judicial discretion as to whether even after rejecting the explanation of the assessee the value of the investments were to be treated as the income of the assessee. According to the High Court, the Tribunal had not committed any error in taking into account the complete absence of resources of the assessee and also the fact that having regard to her age and the circumstances in which she was placed she could not be credited with having made any income of her own and in these circumstances the Tribunal was right in refusing to make an addition of the value of the investments to the income of the assessee.

3. Shri Ranbir Chandra, the learned Counsel appearing for the Revenue, has urged that the Tribunal as well as the High Court were in error in their interpretation of Section 69 of the Act. The submission is that once the explanation offered by the assessee for the sources of the investments found to be non-acceptable the only course open to the Income-tax Officer was to treat the value of the investments to be the income of the assessee. The submission is that the word 'may' in Section 69 should be read as 'shall'. We arc unable to agree. As pointed out by the Tribunal, in the corresponding clause in the Bill which was introduced in Parliament, the word 'shall' had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was substituted by the word 'may'. This clearly indicates that the intention of Parliament in enacting Section 69 was to confer a discretion on the Income-tax Officer in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the Income-tax Officer is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under Section 69 has to be considered in the light of the facts of each case. In other words a discretion has been conferred on the Income-tax Officer under Section 69 of the Act to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case.

4. In the instant case, the Tribunal has held that the discretion had not been properly exercised by the Income-tax Officer and the Appellate Assistant Commissioner in taking into account the circumstances in which the assessee was placed and the Tribunal has found that the sources of investments could not be treated as income of the assessee. The High Court has agreed with the said view of the Tribunal. We also do not find any error in the said finding recorded by the Tribunal. There is thus no merit in these appeals and the same are accordingly dismissed. No order as to costs.