

Dr. K. George Thomas

Vs

Commissioner of Income-Tax, Kerala.

Civil Appeals Nos. 2916 to 2919 of 1977

(R. S. Pathak, Sabyasachi Mukharji JJ)

30.04.1986

JUDGMENT

PATHAK J. -

1. These appeals by certificate granted by the Kerala High Court are directed against the judgment of that High Court answering the questions referred to it by the Income-tax Appellate Tribunal in favour of the Revenue and against the appellant.

The assessee, who is the appellant before us, is assessed to income-tax in the status of an individual. He runs a printing press known as "Kerala Dwani" and also a Malayalam daily newspaper of the same name. For the assessment year 1962-63, he filed a return of income showing a loss of Rs. 3,37,183. The Income-tax Officer found that various remittances from the United States of America had been received by him, ostensibly in his capacity as Vice-President of the India Gospel Mission. The assessee maintained two bank accounts with the Indian Overseas Bank, Kottayam. One account was in the name of the assessee and the other in the name of the India Gospel Mission. A credit of Rs. 5,85,637 appeared in the account of the India Gospel Mission. The Income-tax Officer enquired into the utilisation of the funds credited in that account and on examination of the material before him, he found that the major part of the funds had been turned over to the newspaper "Kerala Dwani" and a sizeable part had been utilised for household expenses by the assessee, such as the purchase of a cow, payment of house rent of his father, personal trips to Bombay, purchase of property by the assessee, and providing loan facilities to the assessee's close relatives including his father, brothers and others without interest. The personal expenses met from out of these funds and the amount utilised for the purchase of properties in the name of the assessee and his five brothers were claimed by the assessee as representing loans taken by him in his individual capacity to be repaid in subsequent years. The Income-tax Officer found that no interest had been charged on those drawings and that the account showed that the assessee had been operating on those funds in his complete discretion without regard to any stipulated principles or directions. He found that the purchases and the advances made for the purchase of properties found a place in the balance-sheet prepared for the Indian Gospel Mission. He rejected the claim of the assessee that the newspaper, "Kerala Dwani", had been taken over by the India Gospel Mission and that the assessee had nothing to do with it. He found that the statutory declarations required to be published by the newspaper annually showed that the assessee in his individual capacity was the owner of the press and the newspaper, and that nowhere was the India Gospel Mission shown as having any connection with them as such or through him as Vice-President of the India Gospel Mission. The Income-tax Officer came to the conclusion that on the examination of the entire material, it was clear that the funds had been received mostly for assisting the assessee in running the newspaper and that the funds of the India Gospel Mission and the newspaper "Kerala Dwani" had all been mixed up and treated together

as one unit and the assessee had been operating upon all these funds as the individual owner of both the newspaper and the funds. The Income-tax Officer observed that the remittances had been made to the assessee entirely because of his business activities and had been utilised by him for his business and personal activities. He held that the entire receipts of cash from the United States of America were relatable to the business activities of the assessee and were assessable to tax as the assessee's income. He rejected the explanation of the assessee that the drawings constituted loans taken from himself in his personal capacity and paid to himself as Vice-President of the India Gospel Mission. Following the decision in *P. Krishna Menon v. CIT* [1959] 35 ITR 48, he brought the amount of Rs. 5,85,637 shown in the account of the India Gospel Mission to tax as the income of the assessee.

On appeal by the assessee, the Appellate Assistant Commissioner observed that the amounts withdrawn from the funds were merely loans repayable by the assessee to the India Gospel Mission but no definite finding was given on that question nor did he render any finding on the question whether the receipt of Rs. 5,85,637 in the name of the India Gospel Mission constituted the income of the assessee. The Appellate Assistant Commissioner relied essentially on an earlier order made by the Income-tax Appellate Tribunal in the appeals arising out of the assessments made for the assessment years 1960-61 and 1961-62, in which years similar remittances to the assessee had been held by the Appellate Tribunal to be not taxable.

The Income-tax Officer appealed to the Income-tax Appellate Tribunal and the Appellate Tribunal dismissed the appeal because it preferred to follow its earlier order relating to the assessment years 1960-61 and 1961-62 wherein it had held that the receipts from abroad did not constitute the income of the assessee, and that even if they were assumed to constitute his income, they were receipts of a casual and non-recurring nature not arising from business or the exercise of a profession or occupation and, therefore, not taxable.

At the instance of the Revenue, the Appellate Tribunal referred the following two questions to the High Court of Kerala, for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in finding that the amount of Rs. 5,85,637 assessed by the Income-tax Officer was not assessable as the income for the assessment year-1962-63 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in finding that the amount of Rs. 5,85,637 are receipts of a casual and non-recurring nature not arising from business or the exercise of a profession or occupation within the meaning of section 10(3) of the Income-tax Act, 1961 ?"

This reference was numbered as Reference No. 22 of 1975 in the High Court.

By its judgment dated February 3, 1977, the High Court held that the amount of Rs. 5,85,637 was assessable as the income of the assessee for the assessment year 1962-63 and that the receipts were not of a casual and non-recurring nature. A reference made to the High Court against the order of the Appellate Tribunal for the assessment years 1960-61 and 1961-62, of which mention has been made earlier, had already been answered by the High Court in favour of the Revenue and against the assessee. That judgment has been reported as *CIT v. Dr. K. George Thomas* [1974] 97 ITR 111 (Ker). We may point out that that judgment of the High Court has brought in appeal to this court and was upheld by a Division Bench of this court, of which one of us (Sabyasachi Mukharji J.) was

a member, and the judgment of this court has since been reported in Dr. K. Geovge Thomas v. CIT [1985] 156 ITR 412. Upon that it is clear that the basis on which the Appellate Tribunal proceeded to decide the case in favour of the assessee stands displaced. Learned counsel for the assessee contends, however, that there is a material difference between the case for the assessment years 1960-61 and 1961-62 and the case for the assessment year 1962-63 inasmuch as in the former cases, the remittances were entered in the personal name of the assessee while in the present case the remittances have been shown in a separate account standing in the name of the India Gospel Mission. To our mind, the distinction sought to be drawn is wholly without substance, having regard to the overwhelming material on the record showing that the assessee had treated both the accounts as his personal accounts from which heavy drawings were made from time to time entirely for his personal personal. The case that the drawings from the account in the name of the India Gospel Mission constituted loans is not supported by the evidence on the record, and it is clear that the entire fund was treated as an intimate part of the assessee's personal funds. That being so, the High Court is plainly right in holding that the amount of Rs. 5,85,637 is assessable as income of the assessee for the assessment year 1962-63. It is also apparent that the receipts cannot be regarded as of casual and non-recurring nature not arising from the assessee's business or the exercise of his profession or occupation within the meaning of section 10(3) of the Income-tax Act, 1961. The decision of this court in P. Krishna Menon's case [1959] 35 ITR 48, supports that conclusion. Indeed, both the questions arising before us for the assessment year 1962-63 were, as we have mentioned earlier, examined by this court on corresponding facts relating to the assessment years 1960-61 and 1961-62 and we cannot do better than adopt the reasons set forth in that judgment in this case. This appeal, therefore, fails.

The other appeals before us arising out of Reference No. 23 of 1975 raise the question of legality and correctness of the levy of penalty on the assessee for not having submitted a return for the assessment year 1962-63, and Reference No. 24 of 1975 and Reference No. 25 of 1975 which raise similar questions for the assessment years 1963-64 and 1964-65, respectively, as in the reference we have dealt with above. No separate submissions have been made by the learned counsel for the assessee on these appeals and they must also fail.

In the result, the appeals are dismissed with costs.

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