

# KERALA HIGH COURT

Commissioner of Income Tax

Vs

K George Thomas

(V.V. Kamat, J.)

27.06.1996

## JUDGEMENT

**V.V. Kamat, J.**

( 1. ) IT appears that learned counsel has filed a memo stating that the assessee, Dr. K. George Thomas, expired leaving behind him a will appointing Mr. M. P. Govindati Nair, advocate, as executor, thereunder with a consequential request that the said executor be brought on record. We have already heard Shri P. Balachandran, learned advocate, not only in these references but also in regard to the necessity of amendment of the record for the purposes of these proceedings by showing the name of Shri M. P. Govindan Nair, advocate, as the executor of the will. Since we are not disturbing the order of the Tribunal and in view of the position that the appearance of Shri P. Balachandran continues for the purpose of amendment of record, the record be amended accordingly by showing Shri M. P. Govindan Nair, advocate, as the executor of the will of the deceased, Dr. K. George Thomas, the assessee. IT is made clear that this is for the purposes of these reference proceedings in regard to which what is required is consequential amendment of the record. We grant the same memo in all these references and proceed to decide them. The following three questions expect our answer : "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and facts in finding that the amounts are not to be included in the total income of the assessee ?

( 2. ) WHETHER, on the facts and in the circumstances of the case, the Tribunal was justified in coming to the conclusion that no materials have been brought out for the assessment years to show that the amounts have been utilised for the business activities of the assessee ? Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in rejecting the contention of the Revenue, that the issue has, already been decided by the High Court in favour of the Department ?" 2. These references are identical in all respects to I. T. R. No. 181 of 1991 decided by us by the earlier judgment. The only difference is that the assessment years involved are different and they are 1968-69, 1972-73, 1973-74, 1974-75 and 1975-76. In regard to these years also the remittances in the name of Indian Gospel Mission are received and credited in the

Indian Overseas Bank, Kottayam. Remittances are received through Indian Christian Crusade, U. S. A. The Tribunal has also decided that these remittances with regard to the assessment years in question could not be included in the total income of the assessee during the years in question. The assessee, Dr. K. George Thomas, is also the same. 3. Therefore, our decision in I. T. R. No. 181 of 1991 would operate as the decision of these references. The questions, therefore, are answered in the affirmative, against the Revenue and in favor of the assessee. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income-tax Appellate Tribunal, Cochin Bench, for passing consequential orders. ;