

KERALA HIGH COURT

Commissioner of Income Tax

Vs

C P Antony

(Bhaskaran, J.)

12.04.1985

JUDGEMENT

Bhaskaran, J.

(1.) THE Tribunal Cochin Bench, has referred to this Court, the following question of law which is said to arise out of the Tribunal's order in IT A No. 54 (Coch)/76-77, dated October 12, 1978, under s. 256 (1) of the IT Act, 1961 (hereinafter referred as "the Act") : "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that penalty had to be levied with reference to return filed on December 31, 1965, notwithstanding the fact that in the return filed on January 5, 1970, the assessee had returned as total income only the income as originally assessed of Rs. 49,710 ?"

(2.) THE assessee is a registered firm. For the accounting year ending with March 31, 1965 (for the asst. yr. 1965-66), the assessee-firm filed a return on December 31, 1965, showing an income of Rs. 33,979. The assessment was completed on June 13, 1966, on an income of Rs. 49,710. Annexure "A" is the copy of this order of assessment. Investigations made by the ITO subsequently revealed that certain credits aggregating to Rs. 58,000 in the books of account of the assessee- firm represented the income of the assessee-firm itself. The ITO, therefore, on September 10, 1969, initiated reassessment proceedings under s. 147 of the Act against the assessee-firm. In compliance with the notice issued for reassessment, the assessee-firm filed a return on January 5, 1970, showing an income of Rs. 49,710 which was the total income assessed originally by the ITO for the asst. yr. 1965-66. When the matter was taken up for assessment, the assessee-firm submitted a petition to the CIT requesting for a settlement of the whole matter, offering a sum of Rs. 1,67,500 to be distributed over the accounting years 1963-64 to 1965-66. For the asst. yr. 1965-66, the amount came to Rs. 40,000. The CIT, however, rejected the assessee-firm's request for waiver or reduction of penalty, and by order dated March 15, 1971, confirmed these assessment proceedings. Thereafter, the ITO on February 17, 1971, wrote a letter to the assessee regarding the additions to be made. The assessee-firm by its letter dated March 16, 1971, agreed to an addition of Rs. 50,000 for the asst. yr. 1965-66. The assessee-firm

also filed a return on November 2, 1973, showing an income of Rs. 98,983. This was arrived at by adding Rs. 58,000 representing the cash credits to the income, as per the original return of Rs. 33,979. The ITO completed the assessment on August 30, 1974, adding Rs. 58,000 to the originally assessed income of Rs. 49,710. Annexure "B" is the copy of the revised assessment order. The ITO had even prior to the passing of the revised assessment order (Annexure "B") initiated penalty proceedings and referred the matter to the IAC, who, on February 9, 1976, imposed a penalty of Rs. 58,000 on the assessee-firm. Annexure "C" is the copy of the said order dated February 9, 1976. On appeal, the Tribunal, while holding that there was sufficient material with the Department for the levy of penalty, granted some relief, directing the ITO to re-work the quantum with reference to the tax avoided, i.e., with reference to the liability as it stood in 1965, and fixing the penalty to be levied at the minimum under the statute, that is to say, 20 per cent of the tax avoided. Annexure "D" is the copy of the Tribunal's order dated October 12, 1978.

(3.) THE bone of contention in this reference is the point of time at which the concealment of income took place, which, in its turn, would have a bearing on the question as to the provision of law to be applied for fixing the penalty, that is to say, whether the provisions of s. 271(1) of the Act, as it stood prior to its amendment in 1968 or as it stood on January 5, 1970, after the amendment of 1968, would apply to the facts of the case. ;