The Catholic Syrian Bank Ltd vs The Addl.Commissioner Of Income Tax

Kerala High Court The Catholic Syrian Bank Ltd vs The Addl.Commissioner Of Income Tax on 20 March, 2012 Author: Bhabani Prasad Ray Bench: C.N.Ramachandran Nair, B.P.Ray

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.N.RAMACHANDRAN NAIR & THE HONOURABLE MR.JUSTICE B.P.RAY

TUESDAY, THE 20TH DAY OF MARCH 2012/30TH PHALGUNA 1933

ITA.No. 98 of 2011 -------------------------- [I.T.A.NO.10/COCH/2009 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN] ....

APPELLANT/APPELLANT/APPELLANT: --

THE CATHOLIC SYRIAN BANK LTD., ST.MARYS COLLEGE ROAD, THRISSUR.

BY ADV. SRI.V.B.UNNIRAJ.

RESPONDENT/RESPONDENT/DEPARTMENT: ---

THE ADDL.COMMISSIONER OF INCOME TAX, CIRCLE-1 (1), TRICHUR.

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, SRI.JOSE JOSEPH, S.C.

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 20-03-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

I.T.A. NO.98/2011:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: COPY OF THE ORDER OF ASSESSMENT DTD. 28/12/2007.

ANNEXURE B: COPY OF THE ORDER OF THE CIT (A)-V DT.D 14/10/2008.

ANNEXURE C: COPY OF THE ORDER OF THE TRIBUNAL DTD. 11/02/2011.

RESPONDENT'S ANNEXURES: NIL.

//TRUE COPY//

P.A. TO JUDGE.

Prv.

C.N.RAMACHANDRAN NAIR, & BHABANI PRASAD RAY, JJ. .... I.T. Appeal No.98 of 2011 .... Dated this the 20th day of March, 2012.

JUDGMENT

Ramachandran Nair, J. Heard Senior counsel Sri.Sarangan appearing for the appellant- assessee and Standing Counsel for the respondent. The first question raised pertains to disallowance under Section 14A of the Income Tax Act which stands covered against the assessee by judgment of this court in COMMISSIONER OF INCOME TAX Vs. CATHOLIC SYRIAN BANK LTD. & OTHERS reported in 237 CTR 164. Following this judgment we answer this question against the assessee and in favour of the Revenue.

2. Next question pertains to assessment of excess cash in the custody of the assessee which is kept in suspense account under the head "other liabilities and provisions". On going through the Tribunal's order we notice that assessee themselves conceded that the amount is excess cash with them retained for several years and there is no claimant for the same. We do not know why it is not income as the ITA 98/2011 2 assessee themselves have no case that it is payable to anybody or it is a liability due from assessee to any person. We do not find any question of law arising from decision of the Tribunal on this issue wherein the finding recorded is that the amount does not represent liability and it is wrongly shown by the assessee as liability. Even though counsel for the appellant has relied on decision of the Bombay High court in COMMISSIONER OF INCOME TAX Vs. BANK OF RAJASTAN reported in (2010) 40 DTR (Bom.) 173, what we notice is that unlike in this case cash found is not excess carried over for several years but is excess cash available in the immediate past year. So much so, when there is no possibility of any one claiming any amount against this surplus in the suspense account maintained by the assessee, in our view, appellant cannot treat it as a liability or a provision for liability. Further, as and when a claim is made and the appellant has to make any payment, the same will be allowable as a deduction in the year in which the claim is made. So much so, in our view, the Tribunal rightly rejected the claim of the assessee atleast in respect of the arrears carried over for several years. However, we feel

that the excess found during ITA 98/2011 3 the previous year need not be treated as income and can be treated as surplus in the suspense account for three years to meet a liability in the event of any claim being made. We, therefore, confirm the finding of the Tribunal on this issue in respect of arrears brought forward except Rs.95,000/- which is the excess found in the previous year. C.N.RAMACHANDRAN NAIR Judge BHABANI PRASAD RAY Judge pms