

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

MONDAY, THE 11TH DAY OF JUNE 2018 / 21ST JYAISHTA, 1940

ITA.No. 179 of 2013

AGAINST THE ORDER/JUDGMENT IN ITA 164/COCH/2011 of I.T.A.TRIBUNAL,
COCHIN BENCH DATED 14-12-2012

APPELLANT(S)/APPELLANT:

LAILABI KHALID
M/S. S L K FOOD PROCESSING,
POOVATTUPARAMBA,
CALICUT - 673 001.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI

RESPONDENT(S)/RESPONDENT:

COMMISSIONER OF INCOME TAX
AYAKAR BHAWAN, NORTH BLOCK,
KOZHIKODE - 673 001.

R BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, GOI (TAXES)
R BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 11-06-2018
ALONG WITH ITA NO.180/2013 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

K.VINOD CHANDRAN & ASHOK MENON, JJ.

I.T.A.Nos. 179, 180, 181 & 197 of 2013

Dated this the 11th day of June, 2018

J U D G M E N T

Vinod Chandran, J.

We are of the opinion that only two questions arise in the above appeals filed by the assessee against the common order of the Tribunal, which from the memorandum, we extract here under:

- “ii. Whether on the facts and circumstances of the case the appellate tribunal was justified in not relying on the revised annual return in which transfer of shares by the appellant was included and which was also accepted by the Registrar of Companies ?*
- iii. Whether on the facts and circumstances of the case the appellate tribunal was justified in coming to the conclusion that provisions of section 2(22)(e) will apply to the appellant when there was a valid transfer of shares by the appellant which reduced the share holding of the appellant to less than 10 per cent during the relevant period ?”*

2. The facts to be noticed are thus: The appellant–assessee had been a shareholder of a closely held company. For the assessment years 2000–2001, 2003–2004, 2004–2005 and 2005–2006, the assessee had received amounts from the company as loans, respectively of Rs.4,00,000/–, Rs.2,50,000/–, Rs.8,00,000/– and Rs.27,00,000/–. Returns were filed by the assessee without

disclosing the said loans as income. The Assessing Officer under Section 147 issued notice for escapement of income treating the loans received as deemed income under Section 2(22)(e) of the Income Tax Act, 1961. The assessee contended that she did not have 10% shares to be covered under Section 2(22)(e). The company had a total number of 1936 shares of Rs.1000/- each. The assessee held 328 shares. The assessee contended that 173 shares were transferred to one Remlath Beevi on 25-09-1998. On account of the transfer, the share holding of the assessee fell to 155, which was less than 10% of 1936, was the contention.

3. The Assessing Officer called for the annual returns of the Company from the Registrar of Companies for the various years, which were relevant for consideration. The annual returns did not show the shares of the assessee having been transferred to another. The assessee then contended that the Company has filed a revised return after October, 2006 and produced the Registers of the Company as also the minutes book of the Board of Directors to advance their contention. The Assessing Officer found that the public documents; the annual returns filed before the Registrar of

Companies, indicate the assessee having more than 10% holding of shares in the company. The other documents, which were the registers, in the custody of the Company, could be interpolated and are not reliable evidence to absolve the liability to tax. The Assessing Officer rejected the contention of the assessee and proceeded with the assessment under Section 2(22)(e) treating the loan received as deemed dividend, liable to be included as income.

4. The First Appellate Authority and the Tribunal concurred with the findings. Having gone through the orders of the authorities and after having heard the parties, we are of the opinion that no question of law arises from the order of the Tribunal. The questions framed by the assessee as extracted herein above are on facts. The essential facts which the Assessing Officer, the First Appellate Authority and the Tribunal were concerned with was as to whether the assessee had in fact effected the transfer of shares on 25-09-1998 as contended by the assessee. Concurrently this was decided against the assessee.

5. If the assessee had made such transfers and registered it with the Company as stipulated under the Companies Act, 1956,

specifically Sections 108 to 112 dealing with transfer of shares and debentures, necessarily the transfer would have been registered by the Company and share certificates issued in the name of the transferee. If that was done, it would find reflection in the annual returns filed by the Company. The annual returns, however, shows the assessee holding 328 shares.

Obviously, the documents produced by the assessee were cooked up and the revision of returns said to have been filed before the Registrar of Companies, was subsequent to the notice issued under Section 147; an afterthought to wriggle out of the liability. All the authorities having concurred on facts, we do not find any reason to interfere with the orders. No question of law arises from the orders of the Tribunal and we reject the appeals, leaving the parties to suffer their costs.

Sd/-
K. VINOD CHANDRAN
Judge

Sd/-
ASHOK MENON
Judge