Tenet Tax & Legal Private Limited

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Reassessment can't be based only on retro-amendments and interpretation of Apex Court on statutory provisions

Summary – The High Court of Kerala in a recent case of B. Mohanachandran Nair, (the Assessee) held that where status of assessee was a non-resident, fact that assessee was already employed before leaving India should not effect his residential status.

Facts

- The assessment completed under section 143(3) was sought to be reopened after the expiry of four years from the end of the relevant assessment year on the ground that the assessee was not eligible for deduction under section 80HHC in view of the retrospective amendment made to the said provision by the 2005 amendment, and that loss from export of trading goods was to be set off against profits from export of manufactured goods in view of the judgment of the Apex Court.
- The first appellate authority dismissed the appeal.
- The Tribunal held that a situation as warranted under section 147 or 148 had not arisen.

Held

- First of all, on undisputed facts the assessee cannot be blamed for filing a return by contemplating a possible amendment to section 80HHC. Therefore, one cannot state that there was an escaped assessment of tax which could be reopened within a period of four years from the end of the relevant assessment year. Admittedly the amendment and the judgment relied upon by the Assessing Officer was subsequent to the finalisation of the assessment proceedings. It is trite law that such subsequent amendments or subsequent interpretation of the statute is not a ground to reopen concluded assessments.
- On a perusal of the assessment order no material was found to indicate that an eventuality as envisaged under the above proviso had occurred in the case to ignore the limitation period.
- Hence, the Assessing Officer was not justified in reopening the assessment. Accordingly, the appeal is dismissed.