

Income-tax could be levied only when real income would accrue to assessee: Kerala HC

Summary – The High Court of Kerala in a recent case of Sushil Thomas Abraham, (the Assessee) held that where a dispute was pending between assessee-contractor and builders, only income that had come to assessee in relevant assessment year would be taxable and not income that would have come to it if claims against builders were allowed

Facts

- The assessee contractor engaged in building works had undertaken works at the sites of builders. Subsequently, there arose dispute with the Builders which led the assessee to file a suit claiming certain amounts and since dispute was pending, the assessee did not file return of income for the assessment year.
- After a search was conducted in business premises of the assessee, he filed a return disclosing income as per books of account but without payment of the admitted tax on the ground that amount had not reached hands of assessee for reason of claims pending before Civil Court. The Assessing Officer passed an assessment order taking income as per books of account.
- On appeal, the Commissioner (Appeals) rejected appeal as not being maintainable without payment of admitted tax under section 140A.
- On further appeal, the Tribunal remanded the issue on ground that the dispute between builders and assessee was yet to be resolved. Therefore, there was a direction to the Assessing Officer to re-do the assessment without looking into the claims filed against builders.
- On appeal, to High Court:

Held

- From the statement of total income, it can be seen that it was filed based on the profit estimated on the income, which would have come to the assessee, if the claims against builders were allowed. Definitely, the tax on the income can only be assessed after it comes to the hands of the assessee as per the real income theory propounded. In such circumstances, there is no reason to set aside the orders of the Commissioner (Appeals) and the Tribunal. The assessment carried out in compliance of remand order has taxed the income which came to the assessee in relevant year. The appeal was, therefore, to be dismissed.