

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 16TH DAY OF DECEMBER 2016/25TH AGRAHAYANA, 1938

ITA.No. 106 of 2012 ()

AGAINST THE ORDER IN ITA 208/2011 of I.T.A.TRIBUNAL,COCHIN BENCH DATED
22-09-2011

APPELLANT/APPELLANT/ASSESSEE:

SHRI P.P.BHASKARAN,
PROPRIETOR, M/S ROMA ELECTRICALS, PARAKKAL, MAHE-673 310.

BY ADVS.SRI.T.M.SREEDHARAN (SR.)

SMT.NISHA JOHN

SRI.V.P.NARAYANAN

SMT.BOBY M.SEKHAR

RESPONDENT/RESPONDENT/REVENUE:

THE COMMISSIONER OF INCOME TAX (CENTRAL),
5TH FLOOR, KANDMKOLATHY TOWERS M.G. ROAD,
COCHIN-682 011.

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
8.6.2016, ALONG WITH ITA.108/2012 AND CONNECTED CASES, THE
COURT ON 16.12.2016 DELIVERED THE FOLLOWING:

ita nO.106 OF 2012

appendix

APPELLANT'S EXHIBITS:

ANNEXURE-A TRUE COPY OF ASSESSMENT ORDER DATED 30.12.2009 PASSED BY
THE ASSESSING OFFICER FOR THE A.Y.2002-03

ANNEXURE-B TRUE COPY OF THE APPELLATE ORDER IN ITA NO.C-236/CIT(A)
-1/09-10 DATED 14.12.2010 ISSUED BY THE COMMISSIONER
OF INCOME TAXE (APPEALS)-1, KOCHI.

ANNEXURE-C CERTIFIED COPY OF THE COMMON ORDER DTD.22.9.2011 IN
ITA NO.208/COCH/2011 FOR THE AY-2002-03 ISSUED BY THE
ITAT, COCHIN.

TRUE COPY

p.s.to judge

CSS/

Antony Dominic & Dama Seshadri Naidu, JJ.

ITA Nos.106, 108, 109, 110, 112 & 113 of 2012

Dated this the 16th day of December, 2016

JUDGMENT

Dama Seshadri Naidu, J.

The appellant has 'wholesale-cum-retail' business in electrical goods at Mahe, Pondicherry—a proprietary concern. For the Assessment Year (AY) 2002-03, he submitted a return of income u/s 139(1) of the Income Tax Act, 1961 ('the Act') declaring his total income as Rs.1,05,314/-; the tax due as per the assessment was remitted. He also filed returns and remitted tax for other assessment years till 2008-2009.

2. On 30.05.2007, the IT authorities, exercising their powers under Section 132 of the Act, searched the appellant's house. It was in connection with their search initiated against M/s Abdul Gadhafi & others, said to be his business associates in other ventures.

Thereafter, the authorities issued notice under Section 153A r/w Section 153C to the appellant (the Assessee). In response, he declared his income for AY 2002-03 as Rs.2,32,840/-.

3. Relying on the documents allegedly found during search—especially, a bill book relating to the period from 1.04.2006 to 30.07.2007—the authorities estimated the assessee's income as follows: (a) undisclosed business income: Rs.8,89,348/-; (b) agriculture income treated as income from other sources: Rs.50,000/-; and (c) income from other sources (interest on lending): Rs.2,34,000/-.

4. The authorities, after issuing a notice to the appellant u/s 143(2) and 142(1), and after considering his explanation, through Annexure-A order dt.30.12.2009, assessed the appellant's income for that AY at Rs.14,06,190/-. For the rest of the years, too, the assessment was made on the same lines.

Appeal Before the CIT (Appeals):

5. Aggrieved, the appellant filed an appeal before the Commissioner of Income Tax (Appeals)-1, Kochi, in I.T.A. No.

C-236/CIT(A)-I/09-10, which along with other appeals was disposed of on 14.12.2010. The Appellate Authority called for a Remand Report from the Assessing Officer ('A.O.'), considered the assessee's defence, and allowed the appeal in part through Annexure-B order, dt.14.12.2010. So were the other appeals for the remaining assessment years, too.

6. Further aggrieved, the assessee filed a second Appeal before the Income Tax Appellate Tribunal, Cochin Bench ('the Tribunal'), in ITA No. 208/Coch/2011. Eventually, the Tribunal disposed of all the appeals through Annexure-C common order, dt.22.09.2011, in I.T.A. Nos. 208 to 214/Coch/2011.

7. Under the above circumstances, the assessee filed these income tax appeals before this Court:

Table of Cases:

I.T. Appeal	Arises From	Assessment Year
106 of 2012	ITA No.208/Coch/2011	2002-03
108 of 2012	ITA No.209/Coch/2011	2003-04
109 of 2012	ITA No.210/Coch/2011	2004-05
110 of 2012	ITA No.211/Coch/2011	2005-06
112 of 2012	ITA No.213/Coch/2011	2007-08
113 of 2012	ITA No.214/Coch/2011	2008-09

**Submissions:
Appellant's:**

8. Sri T. M. Sreedharan, the learned Senior Counsel for the assessee, has submitted that the Tribunal, to begin with, has mechanically accepted the appellate authority's findings; it ought to have independently considered the issues keeping in view the appellant's explanation. According to him, there was no material or evidence to justify the estimated suppressed-turnover, which is almost ten times to the actual turnover. Emphasizing that there was no discrepancy in the stock found, the learned Senior Counsel would have us accept the usual trade practice of raising bills at Mahe in Pondicherry for the sales effected in Kerala. Because the sales tax is less in the union territory, the appellant's firm issued bills to the dealers in Kerala by charging 1% commission.

9. The learned Senior Counsel has also stressed that the AO had no justification to assume similar suppression uniformly for all the prior six years and to make additions on that basis. The

assessee, according to him, has been prejudiced because the authorities recorded no statement at the time of the search. He has also contended that the AO and the Appellate Authorities have failed to consider that under the scheme of income tax, each Assessment Year is independent and separate.

10. Drawing our attention to Sections 68 to 69C of the Act, the learned Senior Counsel has contended that assessee's unexplained loans or gifts, unaccounted-for assets, investments, or expenses are liable to be brought to tax under deeming provisions in the financial year of such investment or expenditure as found. Identification of the source of corresponding income, contends the learned Senior Counsel, is required under law. He has also submitted that the levy of interest u/s 234B is illegal, unsustainable, and contrary to the relevant statutory provisions.

11. The learned Senior Counsel has placed reliance on Commissioner of Income Tax v. Padamchand Ramgopal¹ and State of Kerala v. C. Velukutty². On the proposition laid down in Hotel

¹ (1970) 76 ITR 719

² (1966) 60 ITR 239

Meriya, relied on by the Revenue, the learned Senior Counsel in his reply submits that it was decided based on the assessee's admission.

Revenue's:

12. Sri P. K. Ravindranatha Menon, the learned Senior Counsel for the Revenue, has submitted that Sections 153A and 153C of the Act empower the AO to reopen and reassess the accounts of any assessing year up to six years. He has taken us through Hotel Meriya, rendered by a Division Bench of this Court, to hammer home his contention that block-assessment is eminently sustainable. He has further submitted that the AO's computation of the undisclosed income is unassailable. On the ratio of Velukutty and Padamachand Ramgopal, the learned Senior Counsel contends that the propositions are entirely fact based.

13. The learned Senior Counsel for the Revenue has relied on *Commissioner of Income Tax v. Hotel Meriya*³, *Commissioner of Sales Tax v. H. M. Esufali H. H. Abdulali*⁴

³ (2011) 332 ITR 537

⁴ (1973) 90 ITR 271

Issues Raised:

I.T. Appeal	Questions of Law	
106 of 2012	1. Whether the rejection of books of accounts and returns of income for the AY 2002-03 is legal and sustainable?	2. Should not the statutory authorities and the Appellate Tribunal have considered that at the time of search in the residential premises and the survey in the business premises no unaccounted material or evidence was found to justify the rejection of the sales turn over as per the books of accounts for the AY 2002-03 and on that basis is not that addition of undisclosed business income arbitrary and illegal and liable to set aside?
108 of 2012	-do- for AY2003-04	-do- for AY 2003-04
109 of 2012	-do- for AY2004-05	-do- for AY 2004-05
110 of 2012	-do- for AY2005-06	-do- for AY 2005-06
112 of 2012	-do- for AY2007-08	-do- for AY 2007-08
113 of 2012	-do- for AY2008-09	-do- for AY 2008-09

Discussion:

14. The facts of that matter are that on 30-05-2007, during the inspection, the authorities found some unsigned computer-sheets and certain bill-books. The officials, during the search, also recorded the assessee's statement under Section 132 (4) of the Act. Two

years later, the assessee retracted his previous statement, though.

15. The estimated turnover for the Assessment Year 2002-03 and for the following years adopted by the AO and the Commissioner of Income Tax (Appeals), as well as the turnover declared by the appellant in his books of accounts, are furnished in the following table:-

Assessment year	Turnover	Suppressed turnover estimated by the Assessing Officer	Revised suppressed turnover estimated as per Remand Report and followed by the CIT(A)
2002-03	13,44,729/-	1,36,40,319/-	1,15,43,534/-
2003-04	6,69,175/-	1,51,55,910/-	1,28,26,149/-
2004-05	7,10,199/-	1,68,39,900/-	1,42,51,277/-
2005-06	11,23,463/-	1,87,11,000/-	1,58,34,752/-
2006-07	19,98,934/-	2,07,90,000/-	1,75,94,169/-
2007-08	19,15,914/-	2,31,00,000/-	1,95,49,077/-
2008-09	53,96,593/-	2,54,10,000/-	2,15,03,985/-

Declared Income, Assessed Income, and Demanded Tax:

AY	Income Declared Initially Rs.	Revised Income Rs.	AO's Reassessment Rs.	Total Tax Demanded Rs.
2002-03	1,05,314	2,32,480	14,06,190	7,12,610
2003-04	1,00,605	1,88,800	24,55,550	11,87,940
2004-05	1,24,140	2,54,470	53,54,340	27,78,570
2005-06	1,35,372	2,13,990	52,97,530	26,42,860
2007-08	92,550	92,250	26,94,770	12,06,820
2008-09	-----	4,09,450	28,82,220	10,15,100

16. The above tabulation would show that as against the declared turnover of Rs.13,44,729/- for the relevant Assessment Year ('AY'), the suppressed turnover over the declared turnover was estimated at Rs. 1,15,43,534/-. It was confirmed by the Appellate Authority.

17. On appeal, the learned Tribunal has framed the following issues: (i) Would the statement of an assessee's partner, as well as that of an employee, along with the documents seized, be tantamount to evidence under Section 158BB of the Income Tax Act? (ii) Has the statement recorded under Section 132(4) only very limited application? (iii) Is the evidence found in the search sufficient to conclude that there was concealment of income for the assessment years? (iv) Is the concealed income liable to be taxed as such at 25%, or any other turnover thereof as profit is liable to be taxed, if so, at what rate? And (v) Is the assessee liable to be surcharged?

Statutory Scheme:

18. Section 68 of the Act deals with 'cash credit', which is any sum found credited in the books of an assessee maintained for any previous year, and which has no explanation about its nature or source to the Assessing Officer's satisfaction. Then that amount may be charged to income-tax as the income of the assessee for the previous year. Section 69 of the Act delineates what unexplained investment is: In a financial year preceding the assessment year, if the assessee has made an investment without reflecting it in the books of account, and if the assessee fails to explain to the AO's satisfaction its nature and source, that investment will be treated as the assessee's income in that financial year.

19. Further, Section 69-A of the Act explains what unexplained money is. In any financial year if the assessee has any money, bullion, jewellery, or other valuable article, the source of which cannot be explained satisfactorily, it may be treated as the assessee's income for that financial year. Under Section 69-B, if the investment in a financial year is more than the recorded amount, the

excess amount will be treated as assessee's income for that financial year. Section 69-C, on the other hand, covers unexplained expenditure which, too, will be treated as the assessee's income.

20. As seen from Section 131, the assessing officer has the same powers as a court has under the Code of Civil Procedure, 1908. The powers concern (a) discovery and inspection, (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath, and (c) compelling the production of books of account and other documents. More importantly, Section 132 of the Act confers on the IT authorities wide powers of search and seizure. Here it needs no elaboration for, concerning the search conducted in the assessee's house, there is no issue raised about its legality.

21. Explanation to Section 132 (4) of the Act clarifies that the evidence so collected would be relevant for any investigation connected with any proceeding under the Act. A person's examination is not only regarding any books of account, other documents, or assets found because of the search, but also

regarding all matters relevant to any investigation connected with any other proceedings under the Act.

22. Now we may get down to the brass-tacks. Once a search is conducted under Section 132, the AO will issue a notice calling on the assessee to furnish the return of income for each assessment year falling within six assessment years "immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made". The explanation to the provision adds that in an assessment or reassessment made concerning a particular assessment year, the tax will be chargeable at the rate or rates as applicable to that assessment year.

23. The pivotal provision is Section 153-C, which concerns the assessment of 'any other person'. Where the Assessing Officer is satisfied that any money, or other valuable article, or books of account, or documents seized or requisitioned belong to a person other than the person referred to in Section 153-A, then the books of account, or documents, or assets seized or requisitioned will be handed over to the AO having jurisdiction over the other person. And

that AO will proceed against the other person by assessing or re-assessing his or her income under Section 153-A.

24. Further, Section 158-B defines 'block period' and 'undisclosed income'. "Block Period" means the period comprising previous years relevant to six assessment years preceding the year in which the search was conducted under Section 132 or any requisition was made under Section 132-A. "Undisclosed Income" includes any money, or other valuable article or thing, or any income based on any entry in the books of account, or other documents, or transactions, where such money, etc., represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act.

25. Section 158-BA shows how to calculate the undisclosed income unearthed during a search. Of particular importance is Section 158-BB, which describes how the undisclosed income of a block-period must be calculated. Section 158-BB deals with the computation of undisclosed income of a block-period. It will be the "aggregate of the total income of the previous years falling within

the block-period computed.” The computation must be based on evidence found during the search or from the books of account or other documents requisitioned. The amount will be “reduced by the aggregate of the total income”, or “increased by the aggregate of the losses” of the previous years.

26. The different contingent circumstances for computing the amount are as follows:

(a) If assessments under Section 143 or Section 144 or Section 147 have been concluded before the search or requisition, those assessments will form the basis;

(b) If returns of income have been filed under Section 139 or in response to a notice issued under sub-section (1) of Section 142 or Section 148, but assessments have not been made till the date of search or requisition, the assessment must be based on the income disclosed in those returns;

(c) If the due date for filing a return of income has expired, but no return of income has been filed, the following are the options:

(A) based on entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition, if those entries result in the computation of loss for any previous year falling in the block period; or

(B) based on entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition, if the income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period;

. . .

(d) if the previous year has not ended or the date of filing the return of income under sub-section (1) of Section 139 has not expired, it must be based on entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course on or before the search or requisition relating to those previous years;

(e) if any order of settlement has been made under sub-section (4) of Section 245-D, the computation will be based on such order of settlement;

(f) if an assessment of undisclosed income had been made earlier under clause (c) of Section 158-BC, based such assessment.

27. Pertinently, the burden of proving to the satisfaction of the AO that any undisclosed income had already been disclosed in any return of income filed by the assessee before the commencement of search or of the requisition will be on the assessee. Section 158-BC, on the other hand, prescribes the procedure to be followed while subjecting an assessee to block assessment.

28. Indeed, this Court in Hotel Maria has observed that none of the provisions of Chapter XIV-B mandates that for making block-assessment there will be evidence about the concealed income for every year in the block-period. It cannot be expected that the assessee would retain documents regarding the concealed income. If documents for every concealment are insisted upon, practically the provision for block-assessment would be defeated.

29. Hotel Maria also holds that when it is revealed in a search under Section 132 of the Act that the assessee was following a particular method to conceal income, it is just and reasonable to presume that the same practice was followed by the assessee throughout the assessment years in the block-period. The presumption, of course, is rebuttable. It is for the assessee to establish that he did not conceal any income in the earlier assessment years in the block-period or that he practiced the detected concealment-method only from a particular period.

Precedential Position:

30. In Padamchand Ramgopal (supra), the ITO has made a

best-judgment assessment for five assessment years and arrived at escaped income. In his order, he gave no reasons why he did not rely on the assessee's accounts. When challenged, the Apex Court has held that insignificant mistakes found in the accounting of one year cannot be a basis for the authority to reject the accounts relating to other assessment years. The Court has felt that the method ITO adopted for determining escaped-income to be highly capricious. It is pertinent to note that, on facts, the Court has observed that none of the authorities have found any mistake in the accounts relating to other accounting years.

31. In *C. Velukutty*, the Apex Court has quoted with approval the Privy Council decision in *CIT v. Laxminarain Badridas*⁵ to exposit the expression "to the best of his judgment" under Section 12 (2) (b) of the Travancore-Cochin General Sales Tax Act, 1125 M.E. (XI of 1125):

"He (the assessing authority) must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose

⁵ (1937) 5 ITR 170, 180

he must, Their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess work in the matter, it must be honest guess work. In that sense, too, the assessment must be to some extent arbitrary."

32. Velukutty adumbrates the limits of the power implicit in the expression "best of his judgment". It holds that 'judgment' is a faculty to decide matters with wisdom truly and legally. A judgment does not depend upon the caprice of a Judge, but on settled and invariable principles of justice. Though there is an element of guesswork in a "best-judgment assessment", it will not be a wild one, but will have a reasonable nexus to the available material and the circumstances of each case. Though the provision provides for a summary method because of the assessee's default, it does not enable the assessing authority to function capriciously without regard for the available material.

33. In H. M. Esufali H. H. Abdulali (supra) the Supreme Court has held that the distinction between a 'best-judgment' assessment

and assessment based on the accounts submitted by an assessee must be borne in mind. Sometime there may be innocent or trivial mistakes in the accounts maintained by the assessee. There may be even certain unintended or unimportant omissions in those accounts, yet the accounts may be accepted as genuine and substantially correct. In such cases, the assessments are made based on the accounts maintained even though the assessing officer may add back to the accounts price of items that might have been omitted to be included in the accounts.

34. Abdulali goes on to observe that the assessment made in the manner stated above is not a "best-judgment" assessment; it is primarily made based on the accounts maintained by the assessee. But when the assessing officer concludes that no reliance can be placed on the accounts maintained by the assessee, he can assess the assessee as per his 'best-judgment'. In doing so he may take such assistance as the assessee's accounts may afford; he may also rely on other information gathered by him, as well as on the surrounding circumstances of the Case. It concludes that the

assessments made based on the assessee's accounts and those made on 'best-judgment' basis are totally different.

35. In *Abdulai* the Supreme Court further observes that if the estimate made by the Assessing Officer is not arbitrary and has nexus with facts discovered, it cannot be questioned. In the very nature of the things, the estimate made may be an over-estimate or an under-estimate. But that is no ground for interfering with the AO's 'best-judgment'. The Court, however, cautions that the basis adopted by the officer should relate to the estimate made.

37. Let us examine *Abdulai* deeper. On facts, *Abdulai* holds that the assessee has neither pleaded nor established any justifiable reason for his not entering in the accounts the transactions noted in the bill-book seized. In such a situation, it was not possible for the Sales Tax Officer to find out precisely the suppressed turnover; he could only estimate it based on the material before him.

38. *Abdulai* disapproves of an approach that insists on the assessing authority's having material before him to prove the exact turnover suppressed. If it were insisted upon, there would be no

“best-judgment” assessment. The assessee cannot be permitted to take advantage of his own illegal acts, for it is his duty to place all facts truthfully before the assessing authority. If he fails to do his duty, he cannot be allowed to call upon the assessing authority to prove what turnover he had suppressed, which fact is within his personal knowledge. The AO’s task in finding out the escaped turnover was by no means easy. In estimating any escaped turnover, Abdulai acknowledges, inevitably there is going to be some guess-work. The assessing authority while making the “best-judgment” assessment no doubt should conclude rationally and unbiased. If the AO’s estimate is bona fide and rational, that there is no good proof to support that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation; it is his “best-judgment” and not of anyone else’s.

39. No court could substitute its “best-judgment” for that of the assessing authority. The courts should first see, Abdulai asserts, whether the accounts maintained by the assessee were rightly rejected as unreliable. If they conclude that they were rightly

rejected, the next question is whether the basis adopted in estimating the turnover has a reasonable nexus with the estimate made. If the basis adopted is held to be relevant, even though the courts may think that it is not the most appropriate basis, the assessing authority's estimate cannot be disturbed.

Block-Assessment: Best-Judgment:

For AY 2005-06:

40. For the AY 2005-06, the assessee faced an allegation that he had invested Rs.24,83,346/- in Kutuparamba property; it remained unexplained in the books of account.

41. The Tribunal has found that, about this investment, the Department has failed to find any corroborative material under Section 69 of the Act. It has also held that the amount in the Registered Sale Deed should be accepted unless countervailing material establishes that the consideration in the Registered Deed is different. The un-signed computer print-out, held the Tribunal, has no evidentiary value. Convinced of the assessee's explanation, the Tribunal has held that the addition made by the Department

regarding the alleged investment in Koothparamba property is not justified. This finding has attained finality.

For AY 2006-07:

42. For the AY 2006-07, the issue concerns the alleged unexplained investment of Rs.76.90,320/- in 'Mahe' Property. The Tribunal has found that the issue had already been dealt with in ITA Nos.724 & 725/Coch/2010 involving Mr. Ashraf. As the issue is identical, the findings rendered in ITA No.724/Coch/2010 & batch, the Tribunal has felt, that the assessment by the AO and the order of the appellate authority could not be sustained. This finding, too, has attained finality.

43. The bill-books found during the search pertain to the period from 01.04.2006 to 30.07.2007. From them AO found the total sales to be at Rs.2.31 crores. Since the assessee had not included the sales in the trading account filed along with the return of income, the AO reassessed the sales backwards in the entire block-period from AY 2002-03.

Estimation of Turnover of Sales-Net Profit-Addition of 5%

44. The learned Senior Counsel for the assessee has emphasised that during the search the authorities found no discrepancy in the stock. Further, he has brought to our notice the defence set up by the assessee: The impounded bills were adjustment bills issued by the assessee for the sales effected to dealers in Kerala. Compared with Kerala, Mahe (Pondichery) has a low tax-rate. So dealers in Kerala get bills from Mahe for which they give 1% commission to the assessee. The assessee has asserted that it is a normal practice. But, as has been held by the AO, the assessee showed no income by way of commission in the returns filed.

45. Absent any cogent explanation from the assessee, the AO estimated the sales at Rs.1,36,40,319/- by reducing 10% from each year from the sales effected for the period 01-04-2006 to 31-03-2007. He computed the GP @ 6.52%, which comes to Rs.8,89,348/-. He added this amount to the assessee's total income as undisclosed business income. Similarly, the AO estimated the sales for the remaining years; he took GP @12.67%, 11. 76%,

11.37% and 9.7% for the AYs 2003-04, 2004-05, 2005-06, and 2006-07 respectively. And at 10.32% on the total sales of Rs. 2.31 crores made during 01-04-2006 to 31-03-2007. For the assessment year 2008-09, the AO estimated the sales by adding 10% to the estimated sales of 2007-08 and adopted G.P.@ 9.70% on the estimated sales of Rs. 2,54,10,000/-. He thus determined the undisclosed income at Rs. 24,64,770/-. Eventually, the total sales from 01-04-2006 to 31-03-2007 had, however, been reworked to Rs.1,95,49,007/-, instead of Rs. 2.31 crores.

46. As has been rightly held by the Tribunal, the assessee could not establish that bill-books accord with the statements of account he submitted to the authorities. Nor has he sustained his defence that the bill-books contained commission transactions, given the tax difference between the State of Kerala and the Union Territory of Pondicherry. Further, important is that any accommodation by way of issuing bills at Mahe to the traders of Kerala for the transactions held only in Kerala is against public policy. The authorities—even if they were to believe the assessee's version

—have rightly refused to recognise those illegal transactions. Indeed, emphatic is the judicial dictum of Abdulai that the AO's best-judgment did carry an element of speculation and approximation.

47. As against the initial turnover of Rs.2.31 crore, the Tribunal has found it to be Rs.1,95,49,077 based on the AO's Remand Report. As a result, the Tribunal has sustained the net profit rate at 5% of the turnover. We reckon that the method of calculation and the procedure adopted by the authorities arriving at the undisclosed income has accorded with the statutory mandate under sections 68 to 69C of the Act. We, therefore, find no reason to interfere with the Tribunal's confirming the AO's adopting the undisclosed income @5% on the revised suppressed turnover.

For AY 2008-09:

48. Now we may focus on another issue : the agricultural income taken as income from other sources, for the AY 2008-09. The appellant owns 21 cents of land on which a house, too, exists. The CIT (Appeals) has agreed with the AO's findings. The finding is that the assessee has claimed no agricultural income in the return, but

showed it in the statement-of-account filed during assessment proceedings. Indeed, the assessee's claim seems to be against the established practice of reckoning income from agricultural activities. Excluding the house, whatever remains of 21 cents may not be, as has been concurrently held, sufficient to generate the income shown by the assessee from agriculture. We, therefore, find no reason to interfere with the concurrent findings entered by both the fora on this aspect — a question of fact.

For AYs 2003-04 and Other AYs:

49. The next issue concerns the AYs 2003-04, 2004-05, and 2005-06. It is about the income in the form of interest on Fixed Deposits the assessee had with Gokulam Chit Funds. Indisputably, the assessee showed fixed deposits; but, correspondingly, failed to reveal in the returns any interest. Absent any explanation from the assessee, the AO adopted interest @10% per annum. To be more explicit, the assessee showed Rs.10 lakh fixed deposit from 13-11-2002 to 31-03-2005, and Rs.5 lakh from 21-01-2003 to 31-03-2009. As noted, he showed no income as interest on those

deposits.

50. Given the size of the deposits, it is but inevitable that the assessee ought to have earned some interest on the fixed deposits. As he has failed to show in his returns any income by way of interest, the concurrent finding entered by both the fora reckoning interest at 10% annually is eminently sustainable; so it calls for no interference.

For AY 2004-05:

51. The next issue concerns the AY 2004-05: the addition of amounts the assessee allegedly lent to other people. He allegedly lent Rs.13 lakh to one Mr. Nanu Vaidyar, Rs. 10.5 lakh to Mr. Nelson, Rs.1 lakh to Mr. Kaitan, Rs.31,000 to Mr. Valsan Ariyaram, and Rs.82,500 to sundry persons. It totals to Rs.25,63,500/-. They are said to be temporary loans.

52. From the records it is evident that the assessee lent the money to Mr. Nanu Vaidyar before 01-04-2001. As for the lending to others, too, exact dates are unavailable. So the AO treated the entire Rs.25,63,500/- as the assessee's unexplained investment during the

AY 2004-05. Leaving aside the minor discrepancies in the assessee's explanation about his lending the amounts to various persons, presumably his friends, we may bear in mind that the assessee is a businessman with considerable turnover. For a businessman, having a turnover of a couple of crores, short-term lending to friends—without interest at that—is neither uncommon nor abnormal.

53. True, the AO's assessment and the adjudicatory authorities' findings are, perhaps, matters of fact. But the facts to fructify into findings need the application of law. If that application of law is flawed, this court can interfere, without causing violence to the established principle of law that there needs no interference on the questions of fact.

54. Even going by the ratio of *Abdulai*, we reckon that the AO's findings on this issue are on unsure foundations. The speculative aspect overshadows the aspect of the established business practices. Given the assessee's explanation, we hold that he ought to have been given the benefit of doubt. In other words, there can be no quarrel on the AO's conclusion that Rs.25,63,500/- is an unexplained

investment, but on his calculating interest, we feel that it is without basis. We, therefore, set aside the Tribunal's findings for AY 2004-05 concerning addition of interest; as a result, we allow the assessee's appeal for AY 2004-05. Similarly, the AO's conjecture on the interest component for the AYs 2005-06, 2006-07, and 2007-08—Rs.2,34,000/-, Rs.2,34,000/-, and Rs. 1,36,500 respectively—cannot be sustained.

Addition of Interest:

55. On the above mentioned amounts, the AO has estimated interest component at Rs.1,48,000/-. For the reasons weighed with us in disallowing the AO's best-judgment the addition of Rs.25,63,500/-, we also hold that the addition of interest on those deposits cannot be sustained.

Fishing Boats:

56. Finally, we may focus on the additions made by the AO because of estimated income from fishing boats for the AYs 2005-06, 2006-07 2007-08, and 2008-09. Undeniably the seized diary revealed income from fishing boats amounting to Rs. 38,750/-, Rs. 43,900/-,

Rs.32,100/-, and Rs. 8000/- for the years mentioned above. As has been rightly and concurrently observed by the adjudicatory authorities, there was precious little explanation from the assessee. We, therefore, uphold the Tribunal's findings and dismiss the appeal for the AYs 2007-08 & 2008-09.

Conclusion:

In the end, we answer the questions of law on all issues against the assessee save the addition of amounts the assessee allegedly lent to other people, totaling to Rs.25,63,500/- and the interest component thereon.

Thus, the above IT Appeals are disposed of. No order on costs.

SD/- Antony Dominic, Judge

sd/- Dama Seshadri Naidu, Judge

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P.S.TO JUDGE