

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC  
&  
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 6TH DAY OF JANUARY 2017/16TH POUSHA, 1938

ITA.No. 3 of 2004  
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AGAINST THE ORDER IN ITA 10/2002 of I.T.A.TRIBUNAL, COCHIN BENCH  
DATED 28-11-2003

APPELLANT/APPELLANT:  
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SRI. R. RAMACHANDRAN NAIR,  
"MAIDAN VILLA" HINDU MISSION ROAD,  
THIRUVANANTHAPURAM.

BY ADVS.SRI.T.M.SREEDHARAN  
SRI.DEEPAK JOY.K.  
SMT.M.S.KIRAN

RESPONDENTS:  
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- 1.THE DY.COMMISSIONER OF INCOME TAX,  
CIRCLE I (1), RANGE-I, INCOME TAX OFFICE,  
THIRUVANANTHAPURAM.
2. THE COMMISSIONER OF INCOME TAX,  
AYAKKAR BHAVAN, KOWDIAR, THIRUVANANTHAPURAM.

R, BY ADV. SRI.P.K.R.MENON(SR.), SR.COUNSEL FOR IT  
R, BY ADV. SRI.GEORGE K. GEORGE, SC FOR IT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON  
06-01-2017, ALONG WITH ITA. 119/2007, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ASSESSMENT ORDER UNDER SECTION 143(3) DATED 27.3.2002.

ANNEXURE B: CERTIFIED COPY OF THE APPELLATE TRIBUNAL'S ORDER IN ITA NO.10/COCH/2002/B.P. 1.4.1986 TO 15.10.1996 DATED 28.11.2003.

ANNEXURE C: TRUE COPY OF THE MISCELLANEOUS PETITION DATED 2.3.2004 SUBMITTED TO THE APPELLATE TRIBUNAL.

ANNEXURE D: TRUE COPY OF THE ASSESSMENT ORDER DATED 27.3.2002 U/S 158 BD r.w.s.158 BC.

ANNEXURE E: TRUE COPY OF THE ASSESSMENT ORDER DATED 29.10.1997 PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX.

ANNEXURE F: TRUE COPY OF THE APPELLATE ORDER DATED 29.3.2000 IN IT (S&S)A.NO.76/COCH/97.

ANNEXURE G: TRUE COPY OF THE JUDGMENT DATED 28.3.2011 IN CRL. APPEAL NO. 792 OF 2011 OF THE HON'BLE SUPREME COURT.

ANNEXURE H(1): TRUE COPY OF THE SWORN STATEMENT OF THE APPELLANT GIVEN BEFORE THE AUTHORISED OFFICER ON 15.10.1996.

ANNEXURE H(2): TRUE COPY OF THE FINANCIAL STATEMENT OF THE APPELLANT AS ON 1.4.1986 AND 15.10.1996.

ANNEXURE H(3): TRUE COPY OF THE FINANCIAL STATEMENT OF SMT.LAKSHMI R. NAIR, W/O THE APPELLANT AS ON 1.4.1986 AND 15.10.1996.

ANNEXURE H(4): TRUE COPY OF THE FINANCIAL STATEMENT OF SHRI.HEMANT KUMAR, S/O THE APPELLANT AS ON 1.4.1986 AND 15.10.1996.

ANNEXURE H(5): TRUE COPY OF THE FINANCIAL STATEMENT OF SHRI.AJAY KUMAR, S/O THE APPELLANT AS ON 1.4.1986 AND 15.10.1996.

ANNEXURE H(6): TRUE COPY OF THE FINANCIAL STATEMENT OF SMT.ANJALI DEVI, D/O THE APPELLANT AS ON 1.4.1986 AND 15.10.1996.

ANNEXURE H(7): TRUE COPY OF THE FINANCIAL STATEMENT OF SMT.CHINMAYI DEVI, MOTHER IN LAW OF THE APPELLANT AS ON 1.4.1986 AND 15.10.1996.

ANNEXURE H(8): TRUE COPY OF THE STATEMENT SHOWING THE AMOUNTS RECEIVED BY SMT.LAKSHMI R.NAIR FROM THE APPELLANT.

ANNEXURE H(9): TRUE COPY OF THE STATEMENT SHOWING THE AMOUNTS RECEIVED BY SMT.LAKSHMI R NAIR FROM SMT.CHINMAYI DEVI.

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ANNEXURE H(10): TRUE COPY OF THE STATEMENT SHOWING THE AMOUNTS RECEIVED BY SHRI.HEMANT KUMAR, S/O THE APPELLANT FROM THE APPELLANT, LAKSHMI R. NAIR AND GRADPARENTS.

ANNEXURE H(11): TRUE COPY OF THE STATEMENT SHOWING THE AMOUNTS RECEIVED BY SHRI.HEMANT KUMAR, S/O THE APPELLANT FROM SHRI.AJAY KUMAR.

ANNEXURE H(12): TRUE COPY OF THE STATEMENT SHOWING THE AMOUNTS RECEIVED BY SHRI.HEMANT KUMAR, S/O THE APPELLANT FROM SMT.ANJALI DEVI.

ANNEXURE H(13): TRUE COPY OF THE CERTIFICATE DATED 16.3.1998 ISSUED UNDER VDIS TO SMT.CHINMAYI DEVI.

ANNEXURE H(14): TRUE COPY OF THE CERTIFICATE FROM V.O.POONHAR FOR THE AGRICULTURAL INCOME OF LATE PARENTS OF R.R.NAIR DATED 2.6.2003.

ANNEXURE H(15): TRUE COPY OF THE AFFIDAVIT DATED 16.6.2003 OF SHRI.R.MADHAVAN NAIR, BROTHER OF THE APPELLANT @ ABHAYANANDA THIRTHAPADA M.SWAMI.

ANNEXURE H(16): TRUE COPY OF THE AFFIDAVIT DATED 16.6.2003 OF SMT.CHINMAYI DEVI, EXPLAINING THE FACTS STATED IN THE EARLIER AFFIDAVITS.

ANNEXURE H(17): TRUE COPY OF THE STATEMENT SHOWING RECONCILIATION OF THE INVESTMENTS CONSIDERED IN THE ASSESSMENT OF THE APPELLANT.

ANNEXURE H(18): FAMILY TREE OF THE APPELLANT AND HIS WIFE.

ANNEXURE H(19): TRUE COPY OF THE STATEMENT OF SHRI.AJAY KUMAR EXPLAINING THE INVESTMENT IN HIS NAME.

ANNEXURE H(20): TRUE COPY OF THE STATEMENT OF SMT.ANJALI DEVI DATED 15.10.1996 EXPLAINING THE SOURCE FOR PURCHASE OF MARUTI ZEN CAR.

ANNEXURE H(21): TRUE COPY OF THE STATEMENT OF SMT.LAKSHMI R. NAIR DATED 15.10.1996.

ANNEXURE I: TRUE COPY OF THE LETTER DATED 11.3.2002 GIVEN BY THE APPELLANT TO THE DY.COMMISSIONER OF INCOME TAX, CIRCULE 1 (1) THIRUVANANTHAPURAM.

ANNEXURE J: TRUE COPY OF THE LETTER DATED 26.3.2002 GIVEN BY THE APPELLANT TO THE DY.COMMISSIONER OF INCOME TAX, CIRCULE-1(1), THIRUVANANTHAPURAM.

// TRUE COPY //

P.A. TO JUDGE

**ANTONY DOMINIC & DAMA SESHADRI NAIDU, JJ.**

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**I.T.A.Nos.3 of 2004 & 119 of 2007**  
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**Dated this the 6<sup>th</sup> day of January, 2017**

**JUDGMENT**

**Antony Dominic, J.**

The assessee has filed I.T.A.No.3/04 and the Revenue has filed I.T.A.No.119/07, both aggrieved by the order passed by the Income Tax Appellate Tribunal, Cochin Bench in I.T.(S&S)A.No.10/02 concerning the block period 1.4.1986 to 15.10.96.

2. Briefly stated, the facts of the case are that the assessee, the appellant in I.T.A.No.3/04, is a former Chief Secretary to the Government of Kerala. There was a search and seizure action under Section 132 of the Income Tax Act in the residential premises of the assessee on 15.10.96 and 16.10.96. Consequent on the search, notice under Section 158-BC was issued on 3.4.97 and was served on the assessee on 7.4.97 for the block period 1.4.1986 to 15.10.96. Assessment under Section 143(3) read with Section 158-BC was completed on 29.10.97. In the said

assessment, the undisclosed income of the assessee was fixed at Rs.1,14,94,610/-.

3. In I.T.(S&S)A. No.76/97 filed by the assessee, the Tribunal passed order dated 29.3.2000 setting aside the order of assessment and directing that appropriate orders shall be passed afresh, in compliance with the principles of natural justice. Accordingly, the matter was reconsidered, assessment order dated 27.3.2002 was passed. In the said order, total undisclosed income of the assessee for the block period was determined at Rs.1,11,42,021/-. This order was impugned by the assessee by filing I.T.(S&S)A.No.10/02 before the Income Tax Appellate Tribunal. By the impugned order, the appeal filed by the assessee was partly allowed and some of the additions made in the assessment order were deleted. I.T.A.No.3/04 is filed by the assessee aggrieved by the order to the extent some of the additions were sustained by the Tribunal while I.T.A.No.119/07 is filed by the Revenue challenging the order of the Tribunal to the extent some of the additions were deleted.

4. In ITA 3/04, the following are the questions of law framed by the assessee for the consideration of this court:

*“ i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in upholding the validity of the search, u/s 132, and the Block assessment made in pursuance thereto for the Block assessment years?*

*ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in confirming the estimate of 'undisclosed income' for the Block Period, when such amounts did not fall within the definition of “undisclosed income” as per Section 158B(b) of the Act?*

*iii) Whether on the facts and in the circumstances of the case, the authorities below are justified in making estimate of undisclosed income, de hors the documents seized at the time of search?*

*iv) Whether inclusion of the undisclosed income, which are already considered in the Block assessment u/s 158BD, in the appellant's assessment order, is legal, valid and sustainable in law?*

*v) Whether the Block assessment order u/s 158BC made on the appellant, and the income considered therein are legal, valid and sustainable in law?”*

5. In ITA 119/07, the following are the questions of law framed by the Revenue for the consideration of this court:

*“1. Whether, on the facts and in the circumstances of the case and also in view of the fact that the deal being in the name of two institutions of repute and stature,*

*i. the Tribunal is justified in holding that the gain from the transactions causing loss to the institutions should be assessed in the head of the institutions and should not be assessed in the hands of the assessee who was directly or indirectly responsible in entering in dealings causing loss to the institutions where the materials clearly shows that the transactions involved were fraudulent in nature and the institution was not gaining in the transactions.*

*2. Whether on the facts and especially in the circumstances of the case and the finding that the Samajam had pocketed some substantial amount by way of profit and indirectly it might have gone to the assessee, was the Tribunal correct in insisting on direct evidence to substantiate that the assessee received the benefit?*

*3. Whether, on the facts and in the circumstances of the case the Tribunal is right in law and fact in holding that the undisclosed income from the purchase of land for the Sree Sankaracharya University of Sanskrit could not be assessed at the hands of the assessee?*

*4. Whether, on the facts and in the circumstances of the case and considering the preponderance of probabilities and the onus that is required to be discharged by the assessee and the failure of the assessee to discharge his burden the Tribunal is right in law and fact in holding that there is nothing on record to show that the assessee has received any amount from this deal”, this amount cannot be taxed in the hands of the assessee and are not*

*the findings wrong, against facts considering the proof required of and possible of?*

5. *Whether, on the facts and in the circumstances of the case;*

*i. Did the assessee discharge the burden of proof?*

*ii. The Tribunal is right in law and fact in deleting the two additions of undisclosed income in the absence of the assessee being put to proof and his failure to prove the same?"*

6. We heard the Senior Counsel for the assessee and the learned Senior Standing Counsel appearing for the Revenue.

7. The first issue that was raised by the counsel for the assessee was with respect to the finding of the Tribunal regarding the gold ornaments. According to counsel, the Tribunal should have accepted the claim of the assessee that the quantity of gold belonged to the other members of his family. We have considered this contention and find from paragraphs 27 and 28 of the order that the case of the assessee was that his wife had inherited gold from her deceased father, that his wife had about 200 sovereigns of her own, his wife's mother had about 400 sovereigns, the most of

which was given to his married daughter and that his daughter had at the time of her marriage received about 67 sovereign of gold, as gift. In paragraph 28, these contentions were examined and the Tribunal rejected the plea mainly for the contradictory contentions urged. Thereafter, in paragraph 29 of its order Tribunal accepted the plea of the assessee to the extent of 1500 gram of gold, by concluding thus:

*“29. Considering the family back ground of the assessee, i.e. one of the eldest brother of the assessee retired from the Central Government as a Dy. Accountant General, three brothers are Advocates, one brother is an officer in State service and the other is a Bank Officer and from the side of his wife, father-in-law was an eminent Economist, was a Professor in the University of Kerala and Member of Second Pay Commission for Central Government Employees, two brother-in-laws are Doctors, two brother-in-laws are at Mumbai, one brother-in-law is in the United States and another brother-in-law is an Electrical Engineer, doing contract work, and social status of the family, smaller gifts from individuals as mentioned above and also gifts from the side of assessee and his wife cannot be ruled out. Therefore, we are of the view that the assessing officer has not considered the case in its entirety, i.e. The gifts received other than the details given by the assessee because the assessee was asked to give the details of persons those who have gifted five or more sovereigns of*

*gold, a reasonable estimation of 1500 grams of gold cannot be ruled out. Therefore, we allow the claim of the assessee to this extent. The difference is to be treated as assessee's undisclosed income."*

These conclusions are purely factual and no question of law can arise from these findings.

8. The other issue that was raised by the counsel for the assessee was regarding the order of the Tribunal upholding the conclusion of the Assessing Officer that the source of income of Rs.3,00,000/- was not properly explained by the assessee and, therefore, the said income is the undisclosed income of the assessee. Insofar as this issue is concerned, reading of the impugned order show that the Tribunal, on appreciation of the facts, came to the following conclusion in paragraph 52 of its order:

*"52. Hearing rival submissions, we are of the view that the addition is to be confirmed. First of all it is to be seen that the letter written by Smt.Kalavathy was seized from the residence of the assessee, in which she express thanks to 'Sir' and Smt.Lakshmi. There is no reason to say that the conclusion of the assessing officer that the word 'Sir' appearing in the letter is none other than the assessee himself. Smt.Kalavathy stated before the revenue authorities that she received*

*the money from the assessee's wife and she was not known to Shri.Suresh. Smt.Lakshmi R.Nair 's claim is that she had not received Rs.3 lakhs from Shri Suresh. If she has not received it is her responsibility to explain from where she received the said sum. There is no evidence to show that she had independent source of income. In her letter dated 20.2.1997 she discloses that the person who arranged the loan was Shri.N.Krishnan Nair, a close friend of Shri.Suresh and Smt.Lakshmi R.Nair only appealed to Shri Krishnan Nair to help Smt.D.K.Kalavathy, an old classmate. Shri Suresh denied advancing the money. There was no withdrawal by Shri Suresh from his account. In the absence of any independent source to be explained by the wife of the assessee, Smt.Lakshmi R.Nair, it is to be treated as the undisclosed income of the assessee. The payment was made in the residence of the assessee. Either the assessee or his wife could not explain the source of payment. Considering the facts and circumstances of the case, we are of the view that this addition is to be confirmed. It is confirmed."*

9. The conclusions of the Tribunal sustaining the finding of the Assessing Officer that the assessee could not explain the source of Rs.3,00,000/- is entirely based on the factual materials which were available before him. Therefore, the Tribunal was fully justified in treating Rs.3,00,000/- as the undisclosed income of the assessee.

10. The second issue that was canvassed before this court was with respect to the purchase of Maruti Zen Car. The contentions of the assessee were considered by the Tribunal and the Tribunal concluded the issue by holding thus:

*“55. Hearing the rival submissions, we are of the view that this addition is to be confirmed. The money has gone from the assessee's bank account. The car stood purchased and registered in the name of the assessee. The circumstances explained and given by the assessing officer to show that there was no clear source for assessee's mother (grandmother of Smt.Anjali Devi) to give Rs.3 lakhs also especially considering the fact that his mother was staying with his elder brother who was relatively not as source full as by the assessee and this led to the conclusion that if anything left behind, it should have gone to the brother, who cared, protected and looked-after the father at that particular point of time. There is no case that other brothers of the assessee had received anything similar to the gifts equivalent for the purchase of car. Considering the facts brought out on record and the explanations of the assessee, we are of the view that the additions were made by the assessing officer only after applying his mind. The mere fact that it has been reproduced verbatim of the previous assessment order does not mean that the assessing officer had not applied his mind. It is the duty of the assessee to explain the source of the money that came into his account. The only explanation of assessee's daughter that the demand drafts were purchased in the name of her father*

*because it was easy to get the car on priority basis if it was booked in her father's name, of course, is an explanation to be accepted provided the source of the money was properly explained with such precision. It has not been done so. In the facts and circumstances of the case, we are of the view that this addition made by the assessing officer is to be confirmed. Ordered accordingly."*

11. These findings again are also completely factual and by no stretch of imagination can it be said that these findings give rise to any question of law for the consideration of this court within the scope of an appeal filed under Section 260A of the Income Tax Act.

12. Lastly, it was contended by the learned counsel for the assessee that many of the items of income which were assessed in the hands of the assessee were already assessed in the hands of his wife Smt.Lekshmi R. Nair, in an assessment under Section 158BD. Counsel contended that such assessment was on the basis of the satisfaction recorded by the Assessing Officer that the assets unearthed in the search action belong to the assessee's wife. Therefore, counsel contended that having recorded such satisfaction and completed assessment treating the assets as those

belonging to the assessee's wife, the same set of assets cannot again be assessed in the hands of the assessee herein. To substantiate this contention, counsel referred us to Section 158BD and also to the principles laid down by the Apex Court in **Commissioner of Income Tax v. Calcutta Knitweaves (2014) 362 ITR 673.**

13. Though this submission would sound attractive, on a closer examination, we find that this contention is only to be rejected for the reason that the assessment completed against the assessee's wife is only protective assessment. It is well settled that where there is a doubt as to the assessment of a person amongst two, parallel proceedings can be taken against both and alternative assessment may also be completed. Therefore, the fact that a protective assessment has been completed against the assessee's wife does not ipso facto mean that assessment of such items of assets at the hands of the assessee is unsustainable. On the other hand, if the assessment at the hands of the assessee is sustained,

the assessment of the very same assets at the hands of the assessee's wife, would have to necessarily fail. In such circumstances, we reject the contention now raised before us by the learned Senior Counsel for the assessee.

14. Insofar as the appeal filed by the Revenue is concerned, in this appeal, the grievance raised is confined to deletion of two additions. The first addition is in respect of profit from land deal at Palakkad by Sree Sankaracharya University amounting to Rs.20,87,200/-. According to the Assessing Officer, the assessee in his capacity as the Vice Chancellor of the University entered into agreement with one Smt.Santhakumari on 4.3.96 for the purchase of 5.63 acres of land for a total consideration of Rs.30,000/-. It is also seen that agreement dated 3.4.96 for the purchase of 87 cents of land for a total consideration of Rs. 2,39,250/- was entered into with one Suresh Babu and an advance of Rs.2,00,000/- was paid on 2.4.96. Another agreement was also entered into on 3.4.96 with Smt.Dakshayani for the purchase of 1.29 acres of land for a total

consideration of Rs.3,54,750/- and an advance of Rs.3,00,000/- was paid. Yet another agreement was also entered into on the same day with Sri.Manikandan for the purchase of 1.31 acres of land for Rs.3,60,250/- and an advance was paid on 3.4.96. Similarly, one more agreement was entered into on the same day with Sri.Rammohan for the purchase of 3.95 acres of land for a total consideration of Rs.10,86,250/-. Advances of Rs.5,00,000/- each were paid on 4.3.96 and 4.4.96. It is found by the Assessing Officer that on the day when these agreements were entered into, the vendors were not the actual owners of the properties agreed to be sold and the vendors acquired the properties much later and for far lower prices. It is on that premise alone the Assessing Officer has arrived at a conclusion that the differential amount (the difference between the agreed sale consideration and the actual amount paid by the vendor) has reached the assessee's hands, the Assessing Officer has treated the said amount as the undisclosed income of the assessee and taxed at his hands.

15. The second deletion ordered by the Tribunal, which is objected by the Revenue, is with respect to certain items of properties purchased by the Sree Sankaracharya University at Attukal in Thiruvananthapuram district. Insofar as these properties are concerned, it is seen that the Sree Vidhyadhiraja Vidya Samajam, a trust of which the assessee is the patron, purchased 128 cents of land by different sale deeds. The first sale deed was executed on 4.9.93 for about 30 cents of land and the price paid is Rs.1,000/- per cent. The second and third purchases were effected in April 1994 for about 25 cents of land for Rs.3,000/- per cent. The fourth sale deed was executed on 25.7.1994 for about 9 cents of land for Rs.5,000/- per cent and the final purchase was on 1.8.94 for about 14 cents of land at Rs.6,500/- per cent. On 3.10.94, Samajam through its Secretary entered into an agreement with Sree Sankarachayra University of Sanskrit for the sale of 100 cents of land out of the 128 cents of land at a sale price of Rs.50,000/- per cent. It is seen that though

the agreement was as above, the University finally purchased only 59 cents of land for a total consideration of Rs.27,50,000/-. According to the Assessing Officer, the assessee played a double role being the patron of the Samajam and the Vice Chancellor of the University. Here again, the difference between the purchase cost and expenses and the sale price of 55 cents coming to Rs.16,99,500/- was treated as the undisclosed income of the assessee and was taxed in the hands of the assessee.

16. These two additions were deleted by the Tribunal on the basis that the conclusions of the Assessing Officer were purely based on surmises and without any evidence. Although the learned Senior Counsel appearing for the Revenue contended that the assessee, being a former Chief Secretary of the State of Kerala and the Vice Chancellor of the University, should not have entered into shady deals and relied on the principles laid down by the Apex Court in its judgment in **McDowell and Co. Ltd. v. Commercial Tax Officer (1985) 154 ITR 148** to argue that the conclusions of the

Tribunal are perverse, having considered the matter in its totality, we confess our inability to accept the contention. While the bonafides of the aforesaid transactions entered into by the assessee, during his tenure of the Vice Chancellor of the University are open to doubt, there is no evidence whatsoever to conclude for the Assessing Officer or the Tribunal or this court to arrive at a conclusion that the differential amounts mentioned above have actually reached the hands of the assessee to be treated as his undisclosed income to be taxed at his hands. In this case, although there are communications which are sufficient to suspect the bonafides of the deals that cannot take the place of all principles to saddle the assessee with the tax liability which requires proof of undisclosed income at the hands of the assessee.

17. In such circumstances, we are of the view that the finding of the Tribunal deleting the additions made in respect of Palakkad and Attukal properties are well found both factually and legally. Therefore, the findings entered by the Tribunal on these two issues

which alone are objected being purely factual do not give rise to any question of law to be considered by this court. We, therefore, confirm the order of the Tribunal.

Appeals are dismissed.

SD/-  
**ANTONY DOMINIC**  
**JUDGE**

SD/-  
**DAMA SESHADRI NAIDU**  
**JUDGE**

*jes*