IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 26TH DAY OF AUGUST 2016/4TH BHADRA, 1938

ITA.No. 1606 of 2009

ITA 1162/2005 OF INCOME TAX APPELLATE TRIBUNAL,
COCHIN BENCH DATED 12-03-2009

APPELLANT(S)/RESPONDENT:

M/S.SKYLINE BUILDERS,
KOCHI-35.

BY ADVS.SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN
SRI.MOHAN PULIKKAL

RESPONDENT(S)/APPELLANT:

THE COMMISSIONER OF INCOME TAX,
KOCHI.

BY ADV. SRI.P.K.R. MENON (SR)

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 26-08-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

ITA.No. 1606 of 2009

APPENDIX

PETITIONERS' ANNEXURES

ANNEXURE A: COPY OF THE ASST.ORDER DATED 29/3/2005 ISSUED U/S.143(3)

ANNEXURE B: COPY OF THE ORDER DATED 25/8/05 OF THE COMMISSIONER OF INCOME TAX (APPEALS)

ANNEXURE C: COPY OF ORDER DATED 12/3/2009 OF THE INCOME TAX APPELLATE TRIBUNAL

ANNEXURE D: COPY OF THE ASST.ORDER DATED 28/12/2007 ISSUED U/S 153A R.W.143(3).

RESPONDENTS' ANNEXURE

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ANTONY DOMINIC &
P.V.ASHA, JJ.

ITA.No.1606 of 2009

Dated this the 26th day of August, 2016

JUDGMENT

Antony Dominic, J.

This appeal filed by the assessee is against the order passed by the Income Tax Tribunal, Cochin Bench in ITA No.1162/Coch/2005 pertaining to the assessment year 2002-03. The assessee is a firm engaged in the business of building residential flats and independent bungalows. For the assessment year in question they filed their returns with a total income of Rs.58,79,863/- (Rupees Fifty eight lakh seventy nine thousand eight hundred and sixty three only). Subsequently following a survey a revised return was filed on 12.11.2003 with a total income of Rs.46,91,241/-(Rupees Forty six lakh ninety one thousand two hundred and forty one only). Rejecting the books of accounts the assessment was completed and order was passed on 29.3.2005, on a total income of Rs.1,48,57,690/- (Rupees One crore forty eight lakhs fifty seven thousand six hundred and ninety only).

2. The assessee challenged the order before the Commissioner of Income Tax (Appeals). The appellate authority allowed the appeal. Aggrieved by the order of the first appellate authority, Revenue filed appeal before the Tribunal on 18.11.2005. By the order impugned, passed on 12.3.2009, the Tribunal allowed the appeal and restored the assessment order. It is aggrieved by this order the assessee has filed this appeal and the questions of law framed are the following:

A. *Whether on the facts and in the circumstances the case the Tribunal is correct in law and fact in adjudicating the appeal filed by the revenue instead of dismissing it being infructuous?*
B. *Whether on the facts and in the circumstances of the case the tribunal is correct in law and fact in reversing the Annexure B order of the Commissioner of Income tax (Appeals)?*

3. We heard the learned counsel for the assessee and the learned Senior Counsel appearing for the Revenue. It is the admitted case of the parties that while when the appeal filed by the Revenue was pending before the Tribunal, on 24.1.2006 a search under section 132 of the Income Tax Act was conducted in the premises of the assessee. Thereafter notice under section

153A was issued on 3.11.2006 and in response thereto the assessee filed its return on 11.12.2006 with a total income of Rs.46,91,241/- (Rupees Forty six lakhs ninety one thousand two hundred and forty one only). Subsequently on 28.12.2007 assessment was framed under section 153A read with section 143(3) on a total income of Rs.51,86,410/- (Rupees Fifty one lakhs eighty six thousand four hundred and ten only).

4. Though this development took place during the pendency of the appeal filed by the Revenue before the Tribunal, when the Tribunal passed the impugned order on 12.3.2009, these developments were not brought to the notice of the Tribunal nor has the Tribunal considered the impact of these developments or section 153A of the Act on the proceedings. According to us for non-consideration of these developments that took place during the pendency of the appeal and also the impact of section 153A on the proceedings, the order passed by the Tribunal needs to be set aside and the matter has to be remitted to the Tribunal for fresh consideration.

Accordingly, setting aside the order passed by the tribunal in ITA No.1162/Coch/2005 the appeal is restored to the file of the Income Tax Appellate Tribunal, Cochin Bench for fresh consideration with notice to the parties and in accordance with law.

The appeal is disposed of accordingly.

ANTONY DOMINIC,
JUDGE.

P.V.ASHA,
JUDGE.

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