

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 25TH DAY OF MAY 2016/4TH JYAISHTA, 1938

ITA.No. 178 of 2010 ()

AGAINST THE ORDER/JUDGMENT IN ITA 340/1980 of I.T.A.TRIBUNAL,COCHIN
BENCH DATED 09-09-2009

APPELLANT(S)/APPELLANT:

THE COMMISSIONER OF INCOME TAX,
COCHIN.

BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT(S):

1. LATE SMT.KHAIRUNNISA EBRAHIM,
PROP.ANNA SEA FOODS,SUN-N-MOON,COCHIN-2.

2. (REP. BY LEGAL HEIRS)

SHRI.AFTHAB EBRAHIM,, P.O.BOX NO.13409,AJMAN,U.A.E.,
(ADDRESS IN INDIA), FLAT NO.7A,WHITE WATER,
KUNDANNUR BRIDGE,THEVARA,ERNAKULAM.

SHRI.ARSHAD IBRAHIM,, P.O.BOX NO.13409, AJMAN, UAE.

SMT.MEHTAB IBRAHIM,, BOX NO.1318, AJMAN, UAE.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
25-05-2016, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ITA.No. 178 of 2010 ()

: 2 :

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A : COPY OF ORDER U/S 143(3) R.W.S. 144B DTD. 18.08.1979 FOR THE ASSESSMENT YEAR 1976-77.
- ANNEXURE B : COPY OF THE ORDER DATED 10.03.1980 OF THE COMMISSIONER OF INCOME TAX (APPEALS)
- ANNEXURE C : COPY OF THE ORDER DATED 09.09.2009 OF THE INCOME TAX APPELLAT TRIBUNAL, COCHIN BENCH IN ITA NO.3340/COCH/1980.
- ANNEXURE D : COPY OF THE JUDGMENT OF THE HONOURABLE HIGH COURT.

RESPONDENTS' ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE.

ANTONY DOMINIC & DAMA SESHADRI NAIDU, JJ.

I. T.A. No.178 of 2010

Dated this the 25th day of May, 2016

JUDGMENT

Dama Seshadri Naidu, J.

The assessee, who is no more, was the proprietress of a concern engaged in the business of processing and exporting sea-food products. For the assessment year 1979-1980, the Revenue made an assessment under Section 143(3) r/w Section 144B of the Income Tax Act making an addition of ₹ 10,7,371/-. Questioning the said assessment, she initiated judicial proceedings. Eventually, a learned Division Bench of this Court, per one of us: Antony Dominic, J, in Commissioner of Income Tax v. South Travancore Distilleries and Allied Products (involving other appeals as well) remitted the matter to the Tribunal clarifying that the questions of law are to be answered by the Tribunal.

2. As a matter of subsequent developments, it has to be placed on record that the assessee died and at no stage could her legal heirs be served with notice, though they had been duly brought on record.

3. Eventually, the Appellate Tribunal, through Annexure C order, having extracted the questions of law required to be

answered as has been directed by this Court, has eventually held as follows:

“2. We have heard the Id. Counsel for the assessee and Id. Departmental Representative. After considering the rival submissions, as rightly pointed out by the Id. Counsel for the assessee, the tax effect is below the prescribed limit in this case. Therefore, we dismiss the appeal of the Revenue in view of the tax effect.

3. Further, in this case, the original assessee died on 04.05.2008 and the Department could not bring the legal representatives on record by way of amended Form 36 in spite of sufficient service of notices. The order sheet will go to show that there were so many adjournments but nothing comes out to bring the legal representatives on record. Moreover, it is submitted that the assessee is no more. therefore, on this count also, the appeal filed by the Revenue is liable to be dismissed and accordingly, is dismissed. the appeal filed by the Revenue is dismissed only with reference to the Questions 1 and which was remanded back to the Tribunal for fresh disposal.”

4. In the above factual drop, the learned Senior Counsel for the Revenue has strenuously contended that this Court, in a very elaborate judgment, has, in the first place, declined to answer the questions of law referred to it; in fact, it has remanded the matter to the Appellate Tribunal with a clear observation that the Tribunal ought to render a finding on the questions of law.

5. According to the learned Senior Counsel, the Tribunal, instead, has chosen to close the matter on technicalities. He singularly contends that answering the questions referred to in Annexure C is quite essential for the Revenue to take further steps.

6. Heard the learned counsel on both sides, apart from perusing

the record.

7. We do find considerable force in the contentions of the learned Senior Counsel: This Court in South Travancore Distilleries and Allied Products (supra) has emphatically held that the questions of law referred to had to be answered by the appellate Tribunal. Indeed, contrary to the directive, the Tribunal has observed that the tax effect is below the prescribed rate and that there was no representation for the legal representatives despite sufficient service of notices.

8. In this context, it is important to note that this Court in South Travancore Distilleries and Allied Products (supra) has already observed that the direction of the Board is that "henceforth" appeal shall not be filed in cases where the tax effect does not exceed the monetary limits prescribed in the Instruction. Evidently, therefore, the operation of the Instruction is only prospective. This position is made further clear, it is further observed, in Clause 11 of the Instruction, which clarified that the Instruction will apply to appeals filed on or after 10th of July 2014 only.

9. This Court, eventually, disposed of the matter with the following direction:

“Since the question raised in these appeals are exactly similar, following the precedent in ITA Nos. 95/10 and 168/10, the orders passed by

the Commissioner (Appeals) and the Tribunal for the assessment years 1991-1992, 1992-1993, 1994-1995, 1995-1996, 1996-1997 and 2002-2003 are set aside and the matters will stand remitted to the Assessing Officer to decide the matters afresh in the manner as directed in the judgment in ITA Nos. 95/10 and 168/10, after giving opportunity to the assessee and if necessary, after calling for particulars or clarification from the Kerala State Beverages Corporation Limited.”

10. In the facts and circumstances, apart from setting aside Annexure C order, we further remand the matter to the Appellate Tribunal reiterating our stand: The learned Tribunal ought to answer the questions of law incorporated in paragraph 1 of Annexure C order.

With the above observations, this appeal is disposed of. No order on costs.

ANTONY DOMINIC, JUDGE.

DAMA SESHADRI NAIDU, JUDGE.

Rv