



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2015

PRESENT

THE HON'BLE MR. JUSTICE VINEET SARAN

AND

THE HON'BLE MRS. JUSTICE S.SUJATHA

ITA NO.528/2014

C/W

ITA NOs.529/2014, 530/2014, 531/2014

BETWEEN:

1. COMMISSIONER OF INCOME TAX,
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE-560 001.
2. THE ASSISTANT COMMISSIONER
OF INCOME TAX,
CENTRAL CIRCLE,
MANGALURU.

...APPELLANTS
(COMMON)

(BY SRI JEEVAN J.NEERALGI, ADV.,)

AND:

M/S.LANCY CONSTRUCTIONS,
5-3-166, HOLY FAMILY CASTLE,
NEHRU AVENUE ROAD,
LALBAGH, MANGALURU-575 003.

...RESPONDENT
(COMMON)

ITA NO.528/2014 IS FILED UNDER SECTION 260A OF
INCOME TAX ACT, 1961, PRAYING TO SET ASIDE THE COMMON
APPELLATE ORDER DATED 4.7.2014 PASSED BY THE ITAT 'A'

BENCH, BANGALORE, IN ITA NO.1296/BANG/2012, FOR THE ASSESSMENT YEAR 2005-06.

ITA NO.529/2014 IS FILED UNDER SECTION 260A OF INCOME TAX ACT, 1961, PRAYING TO SET ASIDE THE COMMON APPELLATE ORDER DATED 4.7.2014 PASSED BY THE ITAT 'A' BENCH, BANGALORE, IN ITA NO.1297/BANG/2012, FOR THE ASSESSMENT YEAR 2006-07.

ITA NO.530/2014 IS FILED UNDER SECTION 260A OF INCOME TAX ACT, 1961, PRAYING TO SET ASIDE THE COMMON APPELLATE ORDER DATED 4.7.2014 PASSED BY THE ITAT 'A' BENCH, BANGALORE, IN ITA NO.1298/BANG/2012, FOR THE ASSESSMENT YEAR 2007-08.

ITA NO.531/2014 IS FILED UNDER SECTION 260A OF INCOME TAX ACT, 1961, PRAYING TO SET ASIDE THE COMMON APPELLATE ORDER DATED 4.7.2014 PASSED BY THE ITAT 'A' BENCH, BANGALORE, IN APPEAL NO.1299/BANG/2012, FOR THE ASSESSMENT YEAR 2008-09.

THESE APPEALS COMING ON FOR ADMISSION THIS DAY, **VINEET SARAN J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The present appeals filed by the Revenue pertain to the assessment years 2005-06, 2006-07, 2007-08 and 2008-09. The facts leading to this case are that for the relevant assessment years 2005-06 and 2006-07, the assessment had been completed under Section 143(3) of the Income Tax Act, 1961 (for short 'Act') whereas for the remaining assessment years 2007-08 and 2008-09, the assessment had been completed under Section 143(1) of the Act. Thereafter, a search was conducted in the premises of the respondent-assessee.

It is the case of the Revenue that the accounts maintained by the assessee and found at the time of search were different from the ones which were submitted by the assessee at the time of regular assessment, in as much as the same did not tally with the corresponding accounts of the creditors and debtors, and thus, on such ground, notices were issued to the assessee.

2. The Assessing Officer made certain additions after holding that the accounts of the assessee did not tally with the corresponding accounts of the creditors and debtors. Challenging the same, the assessee filed appeals before the Appellate Commissioner, which were allowed, after concluding that no incriminating documents were found during the course of search, on the basis of which additions had been made by the Assessing Officer. It was also observed by the Appellate Commissioner that the books of account maintained by the assessee were not rejected by the Assessing Officer. Aggrieved by the same, the Revenue filed an appeal before the Tribunal, which was also dismissed. Challenging the same, these appeals are filed. The questions of law, as raised in leading appeal bearing ITA No.528/2014, which are to be considered by us, are as under:

“i. Whether accounts in Tally copied and seized at the time of search do not come within the purview of ‘material found during the course of search’ as per the ratio of the decision of the special Bench of the Bangalore Tribunal in the case of All Cargo Global Logistics Ltd., -vs- CIT, 18 ITR (Trib) 106?

ii. Whether the Hon’ble Tribunal was right in law in upholding the view that rejection of the books of account was an essential prerequisite for the Assessing Officer to make the said additions?

3. We have heard Sri.Jeevan J. Neeralgi, learned counsel for the appellants as well as Sri S.Parthasarathi, learned counsel appearing along with Sri Mallaha Rao and Jinita Chaterjee, for the respondent, and perused the record.

4. There is a specific finding of fact recorded by the Tribunal, as well as the Appellate Commissioner, that there were no incriminating documents found during the course of search, on the basis of which the additions have been made by the Assessing Officer and that the accounts which were submitted by the assessee at the time of regular assessment were duly verified during the course of such assessment and accepted by the Assessing Officer and in the absence of any incriminating documents having been found, the same accounts of the assessee were reassessed by making further investigations, which is impermissible, as the same would

amount to reopening of a concluded assessment, without there being any additional material found at the time of search.

5. We agree with the opinion of the Tribunal that additions could not have been made by the Assessing Officer without rejecting the books of account of the assessee, and also without there being any adverse comment made by the Assessing Officer with regard to the books of account that were maintained by the assessee, which were duly audited.

6. In our view, if assessment is allowed to be reopened on the basis of search, in which no incriminating material had been found, and merely on the basis of further investigating the books of accounts which had been already submitted by the assessee and accepted by the Assessing Officer at the time of regular assessment, the same would amount to the Revenue getting a second opportunity to reopen the concluded assessment, which is not permissible under the law. Merely because a search is conducted in the premises of the assessee, would not entitle the Revenue to initiate the process of reassessment, for which there is a separate procedure prescribed in the statute. It is only when the conditions prescribed for reassessment are fulfilled

that a concluded assessment can be reopened. The very same accounts which were submitted by the assessee, on the basis of which assessment had been concluded, cannot be reappreciated by the Assessing Officer merely because a search had been conducted in the premises of the assessee.

7. In view of the aforesaid, we are of the opinion that the order of the Tribunal is justified in law and no substantial questions of law arise in these appeals for determination by this Court. The appeals are accordingly, ***dismissed.***

Sd/-
JUDGE

Sd/-
JUDGE

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