

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR  
&  
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 7TH APRIL 2008 / 18TH CHAITHRA 1930

ITA.No. 23 of 2003()

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AGAINST THE ORDER DATED 31/07/2002 IN COCH IN  
IT(S&S)A.4/COCH/2001 of I.T.A.TRIBUNAL,COCHIN BENCH  
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APPELLANT  
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ALLEPPEY FINANCIAL ENTERPRISES,  
ALLEPPEY, REPRESENTED BY ITS PARTNER  
IYPE KURIAKOSE

BY ADV. SRI.JOHN RAMESH K.I.JOHN

RESPONDENTS:  
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COMMISSIONER OF INCOME TAX,  
THIRUVANANTHAPURAM.

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

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD  
ON 07/04/2008, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

C .N. RAMACHANDRAN NAIR &  
T.R. RAMACHANDRAN NAIR, JJ.

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I.T.A. No. 23 OF 2003  
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Dated this the 7th day of April, 2008

**C.R.**

**JUDGMENT**

**C.N. Ramachandran Nair,J.**

The appellant is a financier whose business premises were searched by the Income-tax Department on 6.1.1997. Even though appellant was an assessee before the Income Tax Officer, Ward II, Alleppey, file was sent to the Assistant Commissioner of Income Tax, Investigation circle, Kottayam for completing the block assessment pursuant to search under Section 158BC in terms of Annexure I notification which is issued by the Commissioner of Income Tax under Section 120 of the I.T. Act. From the very beginning appellant questioned the jurisdiction of the assessing officer to whom file is sent for assessment. Since he overruled the objection and made assessment, appeal was filed against the same. During the pendency of the appeal, Commissioner of Income tax suo motu revised the order issued under Section 158BC and directed revision of assessment, against which

appellant filed appeal before the Tribunal. Before the Tribunal, the appellant questioned the jurisdiction of the Assistant Commissioner, Investigation Circle at Kottayam to make assessment after file was transferred to him by the appellant's assessing officer at Alleppey. The Tribunal negated the appellant's plea against which this appeal is filed under Section 260A of the I.T. Act.

2. The only question raised before us is whether the Officer who passed the assessment order, namely, the Assistant Commissioner of Income tax, Investigation circle at Kottayam, has jurisdiction to complete the block assessment under Section 158BC of the Act. Counsel for the appellant referred to the decision of the Supreme Court in *AJANTHA INDUSTRIES V. CENTRAL BOARD OF DIRECT TAXES*, (1976) 102 I.T.R. 281 and contended that before transferring the file from one Officer to another under Section 127(1) of the Act, the assessee should be given a hearing. According to counsel, no hearing was given and the objections about his inconvenience of going to Kottayam to attend the assessment proceedings was ignored by the department when the file was in fact transferred from the Officer at

Alleppey to the Assistant Commissioner of Income tax at Kottayam. Standing counsel appearing for the respondent has referred to Annexure I notification issued by the Commissioner of Income tax under Section 120 of the Act conferring exclusive jurisdiction for assessment of search cases from various Districts and Taluks in the State including the revenue District of Alleppey where from appellant's file was transferred on the Assistant Commissioner of Income tax, Investigation circle, Kottayam. On going through Annexure I dated 24.4.1991 we find that in exercise of delegated powers under Section 120 of the Act, the Commissioner of Income tax has notified the Asst. Commissioner of Income tax, Investigation Circle, Kottayam as Officer having exclusive jurisdiction to make assessment of search cases for various Taluks and revenue Districts including the revenue District of Alleppey. Admittedly appellant is hailing from Alleppey where there is no notified officer to make assessment of search cases. Going by Annexure I notification it is clear that jurisdiction for assessment of search cases from Alleppey District is exclusively conferred on the Officer at Kottayam who really made the appellant's assessment.

3. The next question to be considered is whether the shifting of file from the Officer before whom appellant was assessed at Alleppey to the assessing officer after search for making assessment under Section 158BC is a transfer of file as visualised under Section 127 of the Act. We are in agreement with the respondent's counsel's argument that this is not a case of transfer of file from one officer to another because the assessing officer before whom appellant was assessed, namely, ITO at Alleppey, ceased to have jurisdiction for making assessment under Section 158BC of the Act. Appellant has no case that the Officer before whom appellant was assessed until search had the authority to complete the block assessment under Section 158BC after search. In fact transfer of file arises from an Officer with jurisdiction to make assessment to another Officer also with jurisdiction to make assessment. However, when the Officer before whom appellant was assessed ceased to have jurisdiction and the assessment has to be made by another officer who has exclusive jurisdiction in the matter, it is only a matter of conveying the file by the officer who was making assessment until search to the officer who has

jurisdiction to make assessment after search. All what has happened in this case is after search, ITO at Alleppey who ceased to have jurisdiction to make assessment after search conveyed the file to the officer who really is invested with power to make assessment under Annexure I notification. There is no choice for the department or the appellant to choose between the officers for assessment because there is only one officer who is designated as assessing officer to make assessment of search cases from Alleppey Dist. Therefore there was no need to consider objection against transfer of assessment file in this case and it is only a case of sending file to the only assessing officer who had jurisdiction to make assessment. Since we find that there is no transfer of file as visualised under Section 127(1) of the Act, there was no need to give any hearing to the appellant and therefore there is no violation of the principle laid down in the decision of the Supreme Court above referred.

4. Another decision relied on by the appellant is that of Andhra Pradesh High Court in MUKUTLA LALITA V. CIT, (1997) 226 I.T.R. 23 wherein the High Court has taken the view that fresh notification

conferring jurisdiction under Section 158BD is required after introduction of block assessment in Chapter XIV-B of the Act. We do not think we should go into this case because the case dealt with by the Andhra Pradesh High Court is a Section 158BD case where assessment concerned is in the name of son while the search was in the name of the father. This is a case of block assessment under Section 158BC where the searched assessee is assessed by the department. We are of the view that Annexure I notification in 1991 by the Commissioner of Income tax applies to all cases of assessment after search which includes the block assessment under Section 158BC of the Act. We are therefore of the view that the Tribunal rightly declined appellant's jurisdictional objection against assessment and sustained the assessment made by the Asst. Commissioner of Income tax, Investigation Circle, Kottayam to whom appellant's file was conveyed by the Officer at Alleppey. Even though appellant has referred to Section 124 of the Act and contended that assessing officer as well as the Commissioner did not consider appellant's objection about jurisdiction of the Officer, we do not think the issue survives because

the Tribunal has considered the question and upheld the validity of the assessment which we find is perfectly in order.

We therefore dismiss the appeal.

(C.N.RAMACHANDRAN NAIR)  
Judge.

(T.R.RAMACHANDRAN NAIR)  
Judge.

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