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

TUESDAY, THE 1ST APRIL 2008 / 12TH CHAITHRA 1930

ITA.No. 91 of 2002

ITA.83/COCH/2000 OF I.T.A.TRIBUNAL,COCHIN BENCH
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APPELLANT/ RESPONDENT:

THE COMMISSIONER OF INCOME TAX,
TRIVANDRUM.

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

RESPONDENT/ APPELLANT:

M/S.SREE SEETHARAMA ANJKANEYA VEDA
KENDRA,PADMAVILASOM ROAD,TRIVANDRUM.

BY ADV. SRI.JOSEPH MARKOSE,
SRI.JOSEPH KODIANTHARA.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 01/04/2008, 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. Nos.91 & 139 of 2002

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Dated this the 1st day of April, 2008.

JUDGMENT

C.N. Ramachandran Nair, J.

The appeals filed under Section 260-A of the Income Tax Act, are against the orders of the Income Tax Appellate Tribunal upholding the respondent/assessee's claim for exemption under Section 11(2) of the Act for the assessment years 1995-96 and 1996-97. The assessee is a charitable institution formed with the object of imparting education in Vedas and Upanishads. In the course of assessment for the assessment years concerned, the assessing officer noticed that the assessee was carrying over 75% of the income from year to year for 10 years every year on a regular basis and the assessee was only engaged in creation of assets. On enquiry conducted by the Inspector of Income Tax, it was found that there was no regular course study for Vedas and Upanishads and the Inspector noticed substantial reduction in student numbers in the course of time. Two teachers appeared to have been found with some students from Maharashtra. Even though notice for accumulation of income was given, the assessing officer doubted whether the respondent/assessee is capable of achieving the objects stated in the trust deed. The assessing officer also found that the purpose for which accumulation was made as stated in the prescribed form under Section 11(2) is vague. He also took into account the contract the assessee has, with another company for construction of buildings, though for the purpose of the trust. If the projects have to be funded with the income accumulated, then it is not known whether the assessee will have any surplus fund to spend for the objects of the trust after meeting the huge project cost in the construction activity undertaken by the assessee. The appellate authority also confirmed the order of the assessing officer. However, the Tribunal took the view that the assessee has accumulated only 75% of the income every year and the amount so accumulated is invested in the specified investments qualifying for deduction under Section 11(2) of the Act.

2. Learned Standing Counsel for the department rightly pointed out that the approach of the Tribunal is technical and the assessing officer is justified in going into the question whether the objects of the trust are really accomplished which alone will entitle the assessee for claiming exemption. Primafacie, we are of the view that the carry forward of income upto 75%, though permitted under Section 11(2) of the Act, should not be adopted on a routine basis and if it is done, the very purpose of the trust will be defeated. In fact, Section 11(2) of the Act providing for carry over upto 75% is an exception and if it is followed from year to year, then the

genuineness of the activities of the trust itself should be examined by the assessing officer. In any case, we feel that since the assessment pertains to the years 1995-96 and 1996-97, the assessing officer had occasion to consider the facts pertaining to subsequent years. Since another 12 years have passed from the relevant assessment years, we feel that the assessing officer should examine the matter with reference to the activities of the assessee for subsequent years, the orders passed for those years and pass fresh orders. In fact, we are of the view that a detailed investigation is required about the activities of the trust and the expenditure it incurred so far to achieve the objects of the trust and diversions, if any made. We therefore set aside the orders of the Tribunal and all the authorities below and remand the matter back to the assessing officer for fresh consideration with reference to subsequent assessments and after conducting enquiry and if necessary, after conducting a local inspection in the premises of the assessee about the activity being carried on by the Trust.

The appeal is disposed of in the above terms.

(C.N. Ramachandran Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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