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

WEDNESDAY, THE 27TH FEBRUARY 2008 / 8TH PHALGUNA 1929

ITA.No. 155 of 2002()

AGAINST THE ORDER DATED / / IN COCH. IN
ITA.354/COCH/1996 of I.T.A.TRIBUNAL,COCHIN BENCH
....

APPELLANT/ASSESSEE:

R. BHARATHAN, ABKARI CONTRACTOR,
KOLLAM.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENTS: RESPONDENT/REVENUE:

THE COMMISSIONER OF INCOME TAX,
THIRUVANANTHAPURAM.

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

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 27/02/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

....

I.T. Appeal No.155 of 2002

....

Dated this the 27th day of February, 2008.

JUDGMENT

C.N.Ramachandran Nair, J.

This is an appeal filed by the assessee under Section 260A of the Income Tax Act challenging order of the Income Tax Appellate Tribunal confirming penalty levied under Section 271(1)(c) of the Income Tax Act for the assessment year 1985-86. Even though five questions are raised by the assessee as arising from order of the Tribunal, we find only two issues are involved. One is limitation against levy of penalty and the other, whether penalty could be levied on the facts of the case.

2. So far as the first question is concerned, we do not find there is any case for interference on ground of limitation because the penalty proceedings under challenge is a revised proceedings continued by the officer after the Tribunal set aside the penalty in first round and remanded the matter to the Assessing Officer for reconsideration. In fact the original penalty order was set aside because the quantum of assessment was set aside for reconsideration by the Assessing Officer. The Tribunal rightly set aside the penalty because since the penalty is based on the finding in the

assessment and when such assessment is set aside for reconsideration, necessarily penalty also has to be reconsidered. It is clear from the Tribunal's order that the Tribunal originally did not cancel assessment and penalty orders, but only directed modification after fresh enquiry pertaining to some of the issues, that too, after confirming certain additions in the assessment. Since revised penalty proceedings is only a continuation of the penalty originally initiated in time, the assessee cannot raise limitation. We do not find any ground to interfere with the finding of the Tribunal on this issue.

3. So far as quantum of penalty is concerned, penalty is restricted to three items of addition, one pertaining to income from benami business carried on in the name of Sri.Prakash, another attributable to undisclosed Bank deposits maintained by the assessee, where the Tribunal sustained the addition on peak credit. The last of the addition is the investment made in DKB & Co. which was also not brought to the notice of the department and only investigation of the department revealed these items of income. The facts stated above prove beyond doubt concealment and therefore, there is

no scope for interference with the minimum penalty levied under Section 271(1)(c) of the Income Tax Act. We, therefore, dismiss the appeal.

C.N.RAMACHANDRAN NAIR
Judge

T.R.RAMACHANDRAN NAIR
Judge

pms