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. 157 of 2002()

ITA.70/COCH/1998 of I.T.A.TRIBUNAL,COCHIN BENCH
....

APPELLANT/APPELLANT:

THE COMMISSIONER OF INCOME TAX,
TRICHUR.

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

RESPONDENTS: RESPONDENT:

SMT.ANNAMKUTY JOSE,
GILSA OLD SPARE PARTS & SCRAP MERCHANT,
PATTALAM ROAD, TRICHUR.

BY ADV. SRI.P.BALACHANDRAN
SMT.PREETHA S.NAIR

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

C.R.

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

....

I.T. Appeal No.157 of 2002

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Dated this the 27th day of February, 2008.

JUDGMENT

C.N.Ramachandran Nair, J.

The appeal filed by the Revenue is against the order of the Income Tax Appellate Tribunal dismissing a department appeal for the assessment year 1991-92. We have heard Standing Counsel appearing for the appellant-Revenue and Senior counsel Sri.P.Balachandran appearing for the respondent-assessee.

2. The assessee was a dealer in old spare parts and scraps. In the accounts for the previous year relevant for the assessment year 1991-92, assessee showed sundry credits of Rs.3,13,318.90. When the assessee was called upon to furnish the names and addresses of creditors, the assessee furnished another balance sheet reducing the sundry credit to Rs.41,718/-. Even in the second round, the assessee did not furnish the names and addresses of creditors or confirmation letters from them. Since assessee did not prove the sundry credits, the Assessing Officer made addition. In the first appeal, addition was deleted by the appellate authority on the ground

that assessee's accountant was not qualified and he has not written the accounts properly which according to the Commissioner (Appeals) was not denied by the Assessing Officer. On further appeal, the Tribunal agreed with the first appellate authority and dismissed the appeal. It is against that order this appeal is filed.

3. We are unable to uphold the order of the Tribunal for the simple reason that Tribunal wrongly cast the burden on the department to prove sundry credits shown in the accounts of the assesssee. If assessee claims the amount as due to the creditors, it is for the assessee to prove the same through confirmation letters as and when demanded by the officer. In this case admittedly assessee did not furnish even the names and addresses of sundry creditors. Further, the nature of business is purchase and sale of old spares and scrap by the assessee. The assessee did not even establish the case that there is a practice of credit purchase in the nature of business. Even though there is no specific provision in the statute casting burden on the assessee to prove sundry credits, we feel the principles contained in Section 68 as well as in Section 69(c) are squarely applicable to sundry credits in the case of a trader. In fact credit purchases are nothing but expenditure and if sundry credits are not proved by the assessee, addition can be made by resort to Section 69(c) of the Income Tax Act. We are, therefore, unable to uphold the orders of the Commissioner(Appeals) as

well as that of the Tribunal confirming it holding that burden is on the Assessing Officer to prove sundry credits as representing income of the assessee. If the assessee does not prove the transactions, the sundry credits is to be disallowed which means it has to be added as income of the assessee. We, therefore, allow the department appeal by reversing the orders of the Tribunal and that of the first appellate authority and by restoring the assessment.

4. The next question raised by the department pertains to addition of Rs.4,000/- which was done based on a sales tax assessment on gross profit addition. Having regard to the smallness of the amount involved, we decline to go into the question raised. However, we allow the department appeal pertaining to the first question by reversing the order of the Tribunal as well as that of the first appellate authority and by restoring the assessment.

C.N.RAMACHANDRAN NAIR
Judge

T.R.RAMACHANDRAN NAIR
Judge

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