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IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 9TH DAY OF OCTOBER 2012

PRESENT

THE HON'BLE MR. JUSTICE K. L. MANJUNATH

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

I.T.A. No. 5013/2009

BETWEEN:

1. The Commissioner of Income Tax,
C.R. Building, Navanagar, Hubli.
2. The Asst. Commissioner of
Income Tax, Central Circle,
Belgaum.

- Appellants

(by Sri Y.V. Raviraj, Advocate)

and

SSK Tulajabhavani Kalyan
Mantap Kattad Samithi,
Dajibanpeth, Hubli.

- Respondent

(by Sri Shashank S. Hegde, Advocate)

THIS APPEAL IS FILED U/SEC.260-A OF THE INCOME TAX ACT, 1961, AGAINST THE ORDER DATED 25.03.2009 PASSED IN M.P. NO.84(BNG) {IN IT (SS)A NO.38 (BNG)/04} ON THE FILE OF THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, BANGALORE, AND ETC.

THIS APPEAL COMING ON FOR FNAL HEARING THIS DAY,
K.L.MANJUNATH, J, DELIVERED THE FOLLOWING:-

JUDGMENT

1. The revenue has preferred this appeal being aggrieved by the order passed by the Income Tax Appellate Tribunal dated 28.05.2008 passed in IT (SS) A.No.38/Bang/2004 and also the rejection of Miscellaneous Petition filed by the appellant in M.P. NO.84/BANG/2008 dated 13.03.2009.

2. The facts leading to this appeal are as under:

A search was conducted by the Revenue on the house of one M.M. Meharwade and a huge cash was found in the house. It was contended by M.M.Meharwade that a sum of Rs.25,00,000/- found during the search was that of the respondent which is a Samithi running Kalyan Mantap. Notice under Sec.158BC r/w Sec.158BD of the Income Tax Act, was issued to the respondent. Thereafter the assessee filed its return of income in response to the notice disclosing the income as nil. The order of assessment was passed

bringing tax on undisclosed income of Rs.53,04,000/- by its order dated 19.06.2002, against which the assessee filed appeal before the appellate Commissioner, which order was confirmed.

3. Aggrieved by the concurrent findings, the assessee filed a second appeal before the Tribunal mainly contending that no satisfactory reasons were recorded by the Assessing Officer. Therefore the Tribunal directed the revenue to produce the reasons recorded by the Assessing Authority to satisfy himself to issue notice to the assessee. More than an year time was granted to the revenue. In spite of such an opportunity, the revenue did not produce the satisfaction recorded by the Assessing Officer. Therefore the Tribunal drawing an adverse inference allowed the appeal of the assessee and set aside the order of assessment.

4. Thereafter a Miscellaneous Petition was filed by producing the xerox copy of the satisfaction recorded by

the Assessing Officer. The Miscellaneous Petition also came to be rejected on the ground that inspite of sufficient opportunity granted to the revenue same was not utilized and there are no reasons to allow the Miscellaneous Petition. It was further held that the satisfaction recorded was not sufficient accordingly Miscellaneous petition came to be dismissed on merits also. These orders are called in question in this appeal.

5. The appeal was admitted on 08.03.2012 to answer the following substantial question of law:

“Whether the Tribunal was correct in holding that the Assessing Officer has not recorded a satisfaction for invoking Section 158BD of the Act without verifying the order sheet maintained by the Assessing Officer, wherein satisfaction has been recorded before issuing notice under Section 158BC r/w 158BD of the Act and consequently recorded a perverse finding?”

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6. We have heard the counsel for the parties. We have also seen the copy of the satisfaction recorded by the Assessing Officer, which reads as hereunder:

“There was search and seizure of the house of Shri M.M. Meharwade. In the course of said action some documents related to assessee were found and seized. Therefore the jurisdiction over the assessee has been assigned to the circle by the C.I.T. Hubli vide order No. F.No.109/CIT, HBL/99-2000 dated 8th March 2000. Therefore as in view of that the provisions of Section 158BD applied to the assessee. Notice U/s 158 BC issued.”

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7. On perusal of the same we are of the opinion, no satisfactory reasons are assigned by the Assessing Officer in order to issue a notice u/S 158BD as held by the Tribunal. In addition, we have also seen that the revenue did not show any reasons for non production of the reasons recorded for

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the satisfaction of the Assessing Officer to issue notice u/S 158BD before the Tribunal when time was granted for one year to the revenue to produce the same. Even in this appeal, no explanation is offered except stating that reasons were recorded. When there is no explanation offered by the Revenue for non production of the document before the Tribunal for more than an year and having held that reasons recorded would not constitute satisfactory reasons, we do not see any merits in this appeal. Accordingly, the question of law framed is answered against the revenue. In the result, the appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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