IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 14TH DAY OF JULY 2016/23RD ASHADHA, 1938

ITA.No. 162 of 2008

I.T.A.NO.19/2001 of INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT(S)/APPELLANT/RESPONDENT:

THE COMMISSIONER OF INCOME-TAX,
THIRUVANANTHAPURAM.

BY ADVS.SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT(S)/APPELLANT:

SHRI.K.RAVIKUMAR, VAIKUNDAM,MUDAVANMUGAL,
POOJAPPURA, THIRUVANANTHAPURAM.

BY ADVS. SRI.P.BALAKRISHNAN (E)
SRI.MOHAN PULIKKAL
SRI.K.C.KIRAN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 14-07-2016, ALONG WITH I.T.A.NO.18/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ITA.No. 162 of 2008

APPENDIX

APPELLANT'S ANNEXURES

ANNEXURE A	**TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER DATED 30.03.2001**
ANNEXURE B	**TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME-TAX (APPEALS) DATED 25.05.2001**
ANNEXURE C	**CERTIFIED COPY OF THE ORDER OF THE APPELLATE TRIBUNAL DATED 11.02.2003**

RESPONDENT'SANNEXURES

NIL

//True Copy//

P.A. To Judge

Bb

ANTONY DOMINIC
&
DAMA SESHADRI NAIDU, JJ.
...
I.T.Appeal.Nos.162 of 2008
&
18 of 2009
...
Dated this the 14th July, 2016

J U D G M E N T

ANTONY DOMINIC,J.

1.These appeals are filed by the Revenue, challenging the orders passed by the Income Tax Appellate Tribunal, Cochin Bench in I.T.A.Nos.19 & 20 of 2001, which were filed by the assessee and Revenue respectively. By the impugned order, the appeal filed by the assessee was partly allowed and the appeal filed by the Revenue was dismissed.

2.The assessee was a Chief Engineer in the Travancore Devaswom Board. On 23.02.1999, there was a search and seizure operation in the office and residential premises of the assessee. In the course of search, the officers seized certain documents which evidenced advance of money, fixed deposit receipts and bank pass books belonging to the assessee, his wife and two brothers-in-law. The documents were seized for further scrutiny. The Department also found gold ornaments and a diary containing notings of the assessee in respect of his financial transactions, in the bank locker owned by him.

3.The Assessing Officer served a notice under Sec.158BC on 14.04.1999. Thereupon, the assessee filed block return in Form 2B on 08.12.1999, conceding an undisclosed income of Rs.1.15 lakhs. The assessment was completed by order dated 30.03.2001 determining a total undisclosed income of Rs.44,90,199/-. On a petition under Sec.154, the Assessing Officer modified the assessment, re-determining the undisclosed income at Rs.40,16,272/-. In appeal filed before the First Appellate Authority, some of the items were deleted. In effect, the Appellate Authority granted a net relief of Rs.29,90,170/- and modified the undisclosed income to a sum of Rs.10,26,100/-.

4.The assessee was aggrieved by the additions sustained by the First Appellate Authority and the Revenue was aggrieved by the modifications ordered by the First Appellate Authority. It was accordingly, the appeals were filed by both sides before the Tribunal. By the impugned order, the Tribunal partly allowed the appeal filed by the assessee and dismissed the appeal filed by the Revenue.

5. Challenging the order passed by the Tribunal, these appeals are filed and the questions of law arise for the consideration of this Court are the following:

> *"1(a) Whether, on the facts and in the circumstances of the case, and also in view of the fact that the assessee had assessable income for all the years of the block period, the Income Tax Appellate Tribunal is justified in interfering with the order of the assessing officer who had held the same as undisclosed income?*
>
> *(b) Whether, on the facts and in the circumstances of the case, can not the assessee having salary above the exemption limited to be subjected to block assessment?*
>
> *2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in attributing*

awareness or knowledge of the existence of the assessee, his employment and salary to the revenue and is not the very approach and conclusion of the Tribunal perverse and quixotic?

3. Whether, on the facts and in the circumstances of the case and also in the light of the admission of the assessee, the Tribunal is right in law and fact in deleting the addition of Rs.3,85,000/-?

4. Whether, on the facts and in the circumstances of the case and the case of assessee being that salary income has been disclosed through the annual returns filed by the employer, can the admission of undisclosed income in the statement of the assessee have any connection with salary income and the Tribunal is justified in relying on such a contention and after thought?

5. Whether, on the facts and in the circumstances of the case and in the light of the admission of the assessee the Tribunal is right in law and fact in equating the amount admitted to be undisclosed to salary which according to the assessee is disclosed income?"

6. Heard the learned Senior counsel appearing for the Revenue and the learned counsel appearing for the assessee.

7. The first issue that is considered by the Tribunal was regarding the correctness of the order passed by the

First Appellate Authority, treating a sum of Rs.5,52,876/- as the undisclosed income of the assessee. Although, detailed consideration has been given to this issue from various angles, we found that finally, the Tribunal has placed reliance on Sec.158BE introduced by Sec.65 of the Finance Act, 2002, which is a declamatory enactment. Despite the submissions made by the Revenue and the assessee, we are unable to hold with the findings in this respect concluding that the assessee was eligible for the benefit of Sec.158BE to be illegal. Consequently, we agree with the Tribunal that the First Appellate Authority was not justified in treating the sum of Rs.5,52,876/- as the undisclosed income of the assessee.

8. The second issue considered by the Tribunal was regarding the correctness of the order of the First Appellate Authority to make addition of Rs.3,85,000/-. The Tribunal found that the First Appellate Authority has passed this order on the basis that the assessee had

stated before the officers that he was willing to pay tax on an undisclosed income of Rs.5,00,000/- and that despite such undertaking, the assessee had returned only Rs.1,15,000/- and therefore, the differential amount of Rs.3,85,000/- is liable to be treated as undisclosed income of the assessee. However, the Tribunal held that it has gone through the text of the statement made by the assessee and that there was no such categorical admission by the assessee conceding an undisclosed income of Rs.5,00,000/-. It is on that basis, the Tribunal set aside the direction of the First Appellate Authority and ordered deletion of Rs.3,85,000/-. If the Tribunal is correct that the First Appellate Authority has passed its order on the erroneous basis that the assessee had stated before the officers that he was willing to pay tax on an undisclosed income of Rs.5,00,000/-, then the conclusion of the Tribunal has to be sustained. However, according to us, the Tribunal was wrong in concluding that the opinion of the First Appellate Authority is based only on presumption and that there was no such admission. The incorrectness of the conclusion of Tribunal is evident from Annexure A, the Assessment Order where the Assessing Officer has extracted the relevant questions and answers given by the assessee which reads as follows:

> *"What is the extent of untaxed income earned by you in the last ten years?*
> *Fine to six lakhs rupees.*
> *Are you willing to pay tax on the above amount?*
> *Yes, I am willing to pay tax on the above mentioned amount (5 lakh) Five lakh rupees."*

Therefore, the finding of the Tribunal in this respect is unsustainable and has to be set aside.

9. The other issues that were considered by the Tribunal are with respect to the value of jewellery and regarding the charge of interest under Sec.158BFA of the Income Tax Act. In so far as those issues are concerned, no question of law has been raised in these appeals and therefore, this Court is not called upon to pronounce

on those findings.

10.In the result, these appeals are disposed of setting aside the order passed by the Tribunal to the extend indicated in Paragraph 4 above and restoring the addition of Rs.3,85,000/-. The Assessing Officer give effect to this order by appropriate proceedings.

Sd/-
ANTONY DOMINIC,
JUDGE

Sd/-
DAMA SESHADRI NAIDU,
JUDGE

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[True copy]

P.A to Judge