

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 1ST DAY OF JULY 2016/10TH ASHADHA, 1938

ITA.No. 25 of 2012 ()

AGAINST THE ORDER/JUDGMENT IN ITA 125/COCH/2011 of I.T.A. TRIBUNAL, COCHIN
BENCH DATED 21.10.2011

APPELLANT(S)/APPELLANT:

CLASSY THE ANTIQUE DESIGNED FURNITURE
WOOD COMPLEX TOWER, NEAR AYURVEDA COLLEGE,
CHANKUVETTY, KOTTAKKAL.

BY ADVS. SRI. ANIL D. NAIR
SRI. J. R. PREM NAWAZ
SMT. NIVEDITA A. KAMATH

RESPONDENT(S)/RESPONDENT:

THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-2, KOZHIKODE-673001.

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

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 01-07-2016,
ALONG WITH ITA. 29/2012, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX IN ITA.25/12

APPELLANTS' EXHIBITS:

ANNEXURE A: TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YAR 2007-08
ISSUED TO the APPELLANT.

ANNEXURE B: TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX
(APPEALS) FOR THE YEAR 2007-08 ISSUED TO THE APPELLANT.

ANNEXURE C: TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE
TRIBUNAL, COCHIN BENCH DT.21.10.2011.

/TRUE COPY/

PS TO JUDGE

ANTONY DOMINIC & DAMA SESHADRI NAIDU, JJ.

I.T.A.Nos.25 & 29 of 2012

Dated this the 1st day of July, 2016

JUDGMENT

Antony Dominic, J.

1. These appeals are filed by the assessee being aggrieved by the order passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA.Nos.125/11 and 126/11, concerning the assessment years 2007-08 and 2008-09 respectively.
2. We heard learned counsel for the assessee and the senior counsel for the Revenue.
3. The assessee is a partnership firm. It originally declared loss for both the years under reference. Search under section 132 of the Income Tax Act was carried out in the business premises as well as the residential premises of the partners and books of accounts and other documents were seized. Notices under section 153A of the Act were issued and in response thereto, the assessee filed return on 20.1.2009, declaring loss of ₹16,75,385/- for both

the years. Notices under section 143(2) were issued and on the basis of the statement of one of the partners under section 132(4), assessments were made. Aggrieved by the assessment orders, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The first appellate authority vide separate orders disposed of the appeals remitting the matter to the assessing officer on the limited issue of sale of branded items and directing the assessing officer to exclude such sales for working out understated sales and grant appropriate relief to the assessee. Still aggrieved, the assessee filed appeals before the Tribunal. By the impugned common order, the Tribunal directed that the issue relating to bulk sales be adjudicated by the assessing officer, with opportunity of hearing to the assessee. On rest of the issues, the Tribunal confirmed the order passed by the lower authorities. It is in these circumstances, the assessee has filed these appeals and two questions of law are framed for the consideration of this Court.

4. The first question is whether, in the facts and circumstances of the case, the Tribunal ought to have disregarded the statement recorded under section 132 (4) of the partner of the firm, more so when the Managing Partner was not confronted with any such queries relating to the assessee. The second question framed is whether, in the facts and circumstances of the case, the Tribunal ought to have allowed the claim of expenditure by way of interest to the partners on their capital and salary to the working partners.

5. During the hearing of the appeals, the contentions were reiterated by the learned counsel for the assessee. In so far as the first question relating to the statement of one of the partners recorded under section 132(4) is concerned, it was the contention of the assessee that the person whose statement was recorded is one Jabir who is a 22 year old son of the Managing Partner. According to the counsel, he was only a student and was not involved in the business and that therefore, his statement, which was not a corroborated one, should not have

been acted upon. However, we find from the order passed by the Tribunal that the statement recorded under section 132(4) was attested by two witnesses. The statement was also not retracted in any manner. The assessing officer first appellate authority and the Tribunal were satisfied that Sri.Jabir was actively involved and was fully conversant with the business activities of the firm. In fact, the statement of a salesman of another firm, of which his father himself is the Managing Partner, was to the effect that it was Sri.Jabir who was running the business and even deciding the price of the wooden furnitures that were sold. All these factual findings contained in the order of the Tribunal would therefore indicate that Sri.Jabir was a person who was actively involved in the business and was competent to depose about the business activities of the firm. It may be true that the Managing Partner was not confronted with the contents of the statement made by Sri.Jabir. But having regard to the law laid down by the Apex Court in Narayan Bhagwat Rao Gosavibalajiwale v. Gopal Vinayak Gosavi & Others [AIR 1960 SC 100] relied on by the Tribunal, which

lays down that the statement recorded under section 132(4) of the Income Tax Act is the best evidence, absence of confrontation does not necessarily require eschewing or discarding such a statement. Therefore, we do not find any substance in the first question framed by the assessee.

6. In so far as the second question is concerned, the claim is that the Tribunal should have allowed the claim of the assessee for expenditure by way of interest to the partners on their capital and salary to the working partners. First of all, it is the conceded case of the assessee that they have not raised any such claim either before the assessing officer or before the first appellate authority. The order of the Tribunal also gives an impression that such a claim was raised only when the matter was argued. Secondly, this claim could not have been considered by the Tribunal in the absence of any supporting document, including the partnership deed. The fact that issues relating to sale of branded items and bulk sales are remanded for fresh adjudication by the assessing officer does not mean

that the Tribunal should have, as contended by the counsel for the assessee, remitted this claim of the assessee also to the assessing officer. On facts, we are not satisfied that the Tribunal has committed any illegality.

7. We do not therefore find any illegality in the orders passed by the Tribunal. Answering the questions of law in favour of the Revenue, the order of the Tribunal is confirmed.

Appeals fail and are accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
DAMA SESHADRI NAIDU, Judge.

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