IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

ITA.No. 132 of 2012 ()

AGAINST THE ORDER OF THE ITAT, COCHIN BENCH IN ITA 100/COCH/2010
DATED 27.12.2011

APPELLANT(S)/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:

THE STATE FARMING CORPORATION OF KERALA LTD
FARM HOUSE, VETTITHITTA P.O., ALIMUKKU
PUNALUR-689 696.

R BY ADV. SRI.K.ANAND (SR.)
R BY ADV. SMT.LATHA KRISHNAN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 28-05-2015, ALONG WITH ITA. 17/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN ITA.132/12

<u>APPELLANT'S EXHIBITS</u>:

ANNEXURE A: TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER U/S.143(3) DATED 22.12.2006.

ANNEXURE B: TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER U/S143(3) DATED 20.3.2009.

ANNEXURE C: TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 4.11.2009.

ANNEXURE D: TRUE COPY OF THE ORDER OF THE APPELLATE TRIBUNAL DATED 27.12.2011.

ANNEXURE E: A TRUE COPY OF THE ANNEXURE TO AUDITORS' REPORT FOR THE YEAR ENDED 31.3.2004.

/True copy/

PS to Judge

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

I.T.A.Nos.132 of 2012 & 17 of 2013

Dated this the 28th day of May, 2015

JUDGMENT

Antony Dominic, J.

1. These appeals are filed by the Revenue impugning the orders passed by the Income Tax Appellate Tribunal, Cochin Bench, allowing ITA.123/Coch/2011 filed by the respondent, a State of Kerala undertaking.

2. The short issue involved is that in compliance with the orders issued by the Government of Kerala, the respondent company has advanced certain unsecured loans to yet another Government of Kerala undertaking by name M/s.Trivandrum Rubber Works Ltd., without any obligation for interest. Finding that the respondent is following mercantile system of accounting, the Assessing Officer took 10% of the amount advanced as interest and treating that as income, brought it to tax. The assessment was confirmed by the Appellate Commissioner but was reversed by the Tribunal. It is in this background these appeals are filed by the Revenue.

3.As we have already stated, the fact that the respondent has advanced amounts to M/s.Trivandrum Rubber Works Ltd., a Government of Kerala undertaking, without any provision for interest and that in fact no amount was received towards interest are admitted. However, it is only on the basis that the respondent is following mercantile system of accounting that the Assessing Officer has estimated the interest and brought it to tax. As rightly observed by the Tribunal, the levy of tax is on receipt of income and such a levy cannot be made on any notional income. The view taken by the Tribunal, in our view, does not suffer from any illegality justifying interference in appeal.

Appeals fail. They are accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

kkb.

/True copy/

PS to Judge