

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

ITA.No. 19 of 2015 ()

ORDER IN ITA 215/2013 to 218 of I.T.A.TRIBUNAL,COCHIN BENCH,
COCHIN DATED 14-08-2014

APPELLANT/APPELLANT/ASSEESSE:

SHRI. K.P.MADHAVAN NAIR
KANATHUR, MULIYAR, KASARAGOD-671542.

BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT/RESPONDENT/DEPARTMENT:

THE INCOME TAX OFFICER, WARD 1, KASARAGOD

BY SRI.P.K.R. MENON, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
03-06-2015, ALONG WITH ITA. 20/2015, 43/2015 & 44/2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S ANNEXUERS:

ANNEXURE A: TRUE COPY OF the ASSESSMENT ORDER FOR the YEAR 2003-04 DATED 09.11.2010.

ANNEXURE B : TRUE COPY OF THE COMMON APPELLATE ORDER OF THE CIT(A) DATED 19.03.2013.

ANNEXURE C: TRUE COPY OF the COMMON INCOME TAX APPELLATE TRIBUNAL ORDER DATED 14.08.2014.

ANNEXURE D: TRUE COPY OF THE ORDER OF THE SUBORDINATE JUDGE OF KASARAGOD DATED 05.12.2009.

ANNEXURE E: TRUE COPY OF THE RECEIPTS AND PAYMENT ACCOUNTS DATED 10.11.2014.

ANENXURE F: TRUE COPY OF THE SALE DEED DATED 19.11.2002.

ANNEXURE G: TRUE COPY OF THE SALE DEED DATED 19.11.2002.

ANNEXURE H: TRUE COPY OF THE ARGUMENT NOTE FILED BY THE APPELLANT

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

I.T.A. Nos.19, 20, 43 & 44 of 2015

Dated this the 3rd day of June, 2015

JUDGMENT

Antony Dominic,J.

Parties and the issues arising in these appeals, relating to assessment years 2003-2004 to 2006-2007, are common. Therefore, these cases were heard together and we dispose of by this common judgment.

2. In so far as the assessment for the years 2003-2004, 2004-2005 and 2005-2006, additions made by the Assessing Officer towards unexplained fixed deposits and investments in property which were confirmed by the appellate authority are the common issues. In so far as the deposit is concerned, it is seen that substantial deposits were made by the assessee in banks and which were sought to be explained by him by contending that he was the Administrator of Sri Kanathur Nalvar Daivasthanam, Kanathur, Kasaragod District. According to him, for the development of the Daivasthanam, amounts were collected from the general public and the amounts found in

deposits were such collected amounts. This was also sought to be substantiated by relying on the receipt and payment account prepared by a Chartered Accountant which was produced by the assessee for the first time before the Tribunal. However the authorities including the Tribunal have concurrently rejected the case of the assessee on the ground that the assessee could not produce any documents substantiating the claims and in fact the Tribunal has also entered a finding that the assertions made by the assessee before the Tribunal were contrary to his own case before the lower authorities. Such being the case, we cannot find fault with the Tribunal in having confirmed the findings of the lower authorities.

3. Similar was the case with fixed deposit of Rs.1,10,881/- and agricultural income of Rs.3,00,000/- which was treated as income from other sources.

4. It is also seen that the Tribunal has found accepted the case of the Assessing Officer regarding the investment in property at Rs.16,95,000/-. In so far as this investment is concerned, the appellant contended that the property in question was purchased by him along with four others and that therefore the entire investment cannot be added to his income. However, there is absolutely no explanation regarding his failure in producing the documents before the Assessing Officer. That

apart he also has not adduced any evidence at any stage of proceedings. He also did not adduce any evidence regarding the contributions that are allegedly received by him from the other persons who are stated to be the co-owners. Such being the case, the Tribunal's order confirming this order also does not merit any interference. However in so far as the assessment year 2006-2007, the order which was confirmed by the Tribunal and which is challenged in ITA No.43 of 2015 is concerned, we find that the assessee has been assessed on the basis that there is an un-disposed investment of Rs.15,14,200/-. We find from Annexure-D, objection filed by the assessee before the Assessing Officer, he has stated thus:

“As regards the investment in property, it is submitted that we are not in position to understand how you have arrived at a total investment amount of Rs.1514200. There is no investment in my individual capacity to the tune of Rs.1514200. However the investment made during the year under consideration is detailed in annexure I enclosed. I do not understand what are the document comprised off get the total investment of RS.1514200 as alleged. The details may be made available to me so as to explain the same. The details of investments made by my family members are detailed in annexure I and copy of document refered are enclosed.”

5. Not only that the details which were allegedly in the possession of the Assessing Officer and which is mentioned in

the assessment order were not disclosed to the assessee, but also the Assessing Officer also has not disclosed any such details in the assessment order. This contention has also not been considered by the first appellate authority and the Tribunal. In such circumstances, we are unable to sustain the inclusion of Rs.15,14,200/- in the income of the assessee for the assessment year 2006-2007, allegedly towards investment made by him in the property. Therefore, we set aside the finding of the Assessing Officer that the assessee has made investment in the property at Rs.15,14,200/- in the assessment year in question and direct the Assessing Officer to re-consider the matter with notice to the assessee. Documents that are relied on by the Assessing Officer on this issue shall be disclosed to the assessee and he shall be given an opportunity to explain the matter as well.

Except to the above extent, the orders confirmed by the Tribunal will stand confirmed.

The appeals are disposed of.

Sd/
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

smv