IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

ITA.No. 94 of 2015

AGAINST THE ORDER IN ITA 282/2014 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 20-10-2014

APPELLANT/APPELLANT in ITA:

A M ABOOBACKER AGED 58 YEARS
S/O.A.K.MOIDEEN HAJI, ANJIKKATH HOUSE,
TRIKKAKARA PO,
KOCHI-682 021

BY ADVS.DR.K.B.MUHAMED KUTTY (SR.)
SRI.SAKIR.K.H.
SRI.V.H.UBAIDHULLA
SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT/RESPONDENT IN ITA:

THE INCOME TAX OFFICER, WARD 2 (2)
ERNAKULAM - 682 018.

R BY SRI.KMV.PANDALAI
SRI.CHRISTOPHER ABRAHAM, SENIOR STANDING COUNSEL FOR INCOME TAX.

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: A true copy of the Assessment order dated 30.12.2009 passed by the respondent.

ANNEXURE B: A true copy of the Appellate order dated 16.1.2014 passed by the Commissioner of Income Tax (Appeals) - II, Kochi in ITA 97/R-2/E/CIT(A)-II/09-10.

ANNEXURE C: A true copy of the order dated 19-9-2014 passed by the Income Tax Appellate Tribunal, Cochin Bench, Cochin in ITA No.282/Coch/2014.

ANNEXURE D: A true copy of the original cash flow statement (without enclosures) for the assessment year 2006-07.

ANNEXURE E: A true copy of the revised cash flow statement (without enclosures) for the assessment year 2007-2008.

//True Copy//

P.A. to Judge

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

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I.T.A.No.94 of 2015

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Dated this the 21st day of May, 2015

JUDGMENT

Antony Dominic, J.

Heard Senior Counsel for the appellant and the Standing Counsel appearing for the respondent.

2. This appeal arises from the order of the Income Tax Appellate Tribunal, Cochin Bench in ITA No.282/2014. By this order, the Tribunal has confirmed addition of unexplained investment of Rs.69,00,000/- under Section 69 of the Income Tax Act.

3. Briefly stated, the facts of the case are that the appellant had purchased 35.137 cents of land in the Thrikkakkara North Village for a consideration of Rs.60 lakhs. The property was purchased jointly with his brother. The appellant was called upon to explain and furnish the source of the said investment since the cash flow statement did not show this investment. During the assessment proceeding, the appellant filed a revised cash flow statement explaining the investment of Rs.69 lakhs towards cost of acquisition, registration charges, stamp duty paid, etc. The

assessing officer was not satisfied with the explanation given by the appellant and treated the sum of Rs.69 lakhs as unexplained investment under Section 69 of the Income Tax Act. This order was confirmed by the Appellate Authority and the Tribunal. It is aggrieved by this proceedings, this appeal is filed under Section 260A of the Income Tax Act with the following questions of law for the consideration of this Court:

> *"Whether on the facts and in the circumstances of the case:*
>
> *1. the Appellate Tribunal is justified in dismissing the appeal against the impugned orders for the reasons stated by it in the impugned appellate orders regarding documents such as the revised cash flow statement supported by bank loan, proceeds from sale of land and other sources and submissions made by the appellant with supporting documents?*
>
> *2. The Appellate Tribunal is justified in affirming the orders passed by the authorities below in regard to the investment of Rs.34,50,000/- towards the construction of building during the next assessment year only for the reason that the rent was received for a completed portion of the building during the previous year?*
>
> *3. The Appellate Tribunal is justified in refusing to reckon the value of the existing building, namely Rs.24,00,000/- and approving the valuation done in other aspects without referring to approved valuer to arrive at correct valuation?*

4. Is not the decision of the Appellate Tribunal erroneous insofar as the impugned assessment order was passed without following the principles of natural justice and without fairness inaction insofar as even personal hearing was not afforded to the appellant before finalising the assessment?"

4. Although various contentions impugning the orders were raised before the Tribunal and were reiterated before us, from the order of the Tribunal we find that the issue has been dealt with in the following manner:

"We have heard both the parties and perused the record. In this case, the assessee purchased land and building situated at Thrikkakkara North Village for a consideration of Rs.60 lakhs jointly with his brother, Shri K.M.Kareem. During the course of assessment proceedings, the assessee filed cash flow statement explaining the source of the same. Since the source of the above investment was not satisfactorily explained, the Assessing Officer treated the amount of Rs.69 lakhs as unexplained investment. Before the CIT(A), the assessee relied on revised cash flow statement. Firstly, to explain the source once again, the assessee has shown the loan from his brother, Shri.K.M.Kareem at Rs.46,00,820/- in the revised cash flow statement which was only Rs.1000/- in the original cash flow statement. For this source also, there is no supporting evidence. Secondly, the assessee has taken out investment of Rs.34,50,000/- towards construction of building to the next assessment year so as to reduce the investment in this assessment year. However, it was noticed by the Assessing

Officer that the actual construction of the building was completed in the previous year relating to the assessment year 2007-08 and the assessee has been deriving rental income from the said property. Hence, when the assessee was getting income from the said building in this assessment year, the construction was already completed and this is only the devise adopted by the assessee to explain the investment by reducing the same which cannot be accepted. Further, though the assessee made a plea that there was an existing building valued at Rs.24,00,000/- which was included in the total cost of construction of the building, there was no evidence to suggest the same in this assessment year. Considering all these facts, we are of the opinion that the assessee has failed to explain the source of investment to the extent of Rs.69,00,000/-. Hence, we are inclined to confirm the order of the CIT(A) on this issue."

5. The above factual finding of the Tribunal shows that the Tribunal was fully justified in upholding the conclusion of the lower authorities that the explanation of the appellant in so far as the investment in question was totally unsatisfactory and in such factual circumstances, we do not find any question of law arising consideration of this Court and, in our view, even the questions of law framed by the appellant also disclose only factual issues.

6. However, learned Senior Counsel for the appellant submits that many of the contentions raised before the Tribunal, were not dealt with

by the Tribunal. If that be so, it is for the appellant to move before the Tribunal afresh and if any such application is filed, the same shall be considered by the Tribunal in accordance with law.

We do not find any merit in this appeal. Appeal is dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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//True Copy//

P.A. to Judge