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

I.T.A.No. 11 of 2013

AGAINST THE ORDER IN ITA 22/2011 of I.T.A.TRIBUNAL, COCHIN BENCH DATED 14-09-2012

APPELLANT/APPELLANT:

GTN INDUSTRIES LTD.
(FORMERLY GTN TEXTILES LTD.), PLOT NO.29
NAGARJUNA HILLS, HYDERABAD-82 (PAN-AAACG 8605N)

BY ADVS.SRI.JOSEPH MARKOS (SR)
SRI.V.ABRAHAM MARKOS
SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TERRY V.JAMES
SRI.TOM THOMAS (KAKKUZHIYIL)

RESPONDENT:

THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-1, ALUVA - 683 101.

R1 BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, GOI (TAXES)
R1 BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

I.T.A.No. 11 of 2013

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF ASSESSMENT ORDER DATED 27.11.2007 PASSED BY THE RESPONDENT.

ANNEXURE B: TRUE COPY OF NOTICE DATED 1.9.2008 ISSUED UNDER SECTION 263 OF THE INCOME TAX ACT BY THE COMMISSIONER OF INCOME TAX, KOCHI.

ANNEXURE C: TRUE COPY OF WRITTEN OBJECTIONS DATED 16.9.2008 FILED BY THE APPELLANT BEFORE THE COMMISSIONER OF INCOME TAX, KOCHI.

ANNEXURE D: TRUE COPY OF ORDER DATED 30-6-2009 ISSUED BY THE COMMISSIONER OF INCOME TAX, KOCHI.

ANNEXURE E: TRUE COPY OF APPEAL DATED 11.1.2011 FILED BY THE APPELLANT BEFORE THE INCOME TAX APPELLATE TRIBUNAL, KOCHI.

ANNEXURE F: CERTIFIED COPY OF ORDER DATED 14.9.2012 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, KOCHI IN I.T.A.NO.22/COCH/2011.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

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I.T.A. No.11 of 2013

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Dated this the 28th day of May, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed against the order of the Income Tax Appellate Tribunal, Cochin Bench confirming the order passed by the Commissioner of Income Tax in exercise of his powers under Section 263 of Income Tax Act for the assessment year 2005-2006. The order under Section 263 of Income Tax Act was preceded by Annexure B notice where the Commissioner has pointed out three issues which were not examined by the Assessing Officer. Apart from that, he has also found that the Assessing Officer did not make proper enquiry with respect to the fresh loans taken during the year in the absence of confirmation letters and that quantitative details of yarn were also not verified. Though assessee objected to the notice by filing Annexure C objection, an order under Section 263 of Income Tax Act was issued as per Annexure D. The said order except on the issue pertaining to expenses claimed on dividends on equity shares which was treated as exempt were confirmed by the Appellate Tribunal as per the impugned order. It is this order which is challenged before us.

2. We heard Senior Counsel for the appellant and the learned Standing Counsel for the Revenue.

3. Relying on the judgment of the Delhi High Court in ***Income Tax Officer V. DG Housing Projects Ltd. (2012) 343 ITR 329 (Delhi)***, counsel for the appellant contended that to sustain an order under Section 263 of the Act, the Commissioner has to come to the conclusion and himself decide that the assessment order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under Section 263 is passed. However, we find from the judgment of a Division Bench of this Court in ***(2014) 360 ITR 36 (Ker) Appollo Tyres Ltd. v. Deputy Commissioner of Income Tax***, that this Court has confirmed an order passed by the Commissioner under Section 263 on the ground that there was no application of mind by the Assessing Officer while passing order under Section 143(3).

4. In so far as this case is concerned, reading of the impugned order itself show that the Commissioner has passed the order on the issues specified finding that there was no application of mind by the Assessing Officer. In such circumstances, following judgment of this Court in ***Appollo Tyres Limited (supra)***, we confirm the order passed by the Tribunal.

Appeal is therefore dismissed.

ANTONY DOMINIC
JUDGE

SHAJI P. CHALY
JUDGE

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