IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

ITA.No. 30 of 2014 ()

AGAINST THE ORDER IN ITA 257 & 258 of 2013 OF THE INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH DATED 05-09-2013

APPELLANT:

G. SUNILKUMAR
SUNEETRON AGENCIES, MC ROAD, THIRUVALLA.

BY ADVS.SRI.RAMESH CHERIAN JOHN
SRI.JOJO ISAAC NEYYARAPALLY

RESPONDENT:

THE COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE, COCHIN.

BY P.K.R. MENON, SC (SENIOR) FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 21-07-2015, ALONG WITH ITA. 49/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ITA.No. 30 of 2014

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE A : TRUE COPY OF THE NOTICE DATED 31.08.2010 ISSUED UNDER SECTION 142(1) OF the ACT BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE, KOTTAYAM.

ANNEXURE B : TRUE COPY OF THE REPLY DATED 28.10.2010 FILED BY THE APPELLANT BEFORE THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE, KOTTAYAM.

ANNEXURE C : TRUE COPY OF THE NOTICE DATED 16.11.2010 ISSUED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE, KOTTAYAM.

ANNEXURE D : TRUE COPY OF THE NOTICE DATED 24.11.2010 ISSUED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE, KOTTAYAM.

ANNEXURE E : TRUE COPY OF THE LETTER DATED 29.11.2010 FILED BEFORE THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE, KOTTAYAM.

ANNEXURE F : TRUE COPY OF THE ORDER OF ASSESSMENT DATED 31.12.2010 PASSED UNDER SECTION 143(3) R/W. SECTION 153(A) OF THE INCOME TAX ACT, 1961.

ANNEXURE G : TRUE COPY OF THE STATEMENT OF FACTS AND GROUNDS OF APPEAL FILED BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS) KOCHI,

ANNEXURE H : TRUE COPY OF THE NOTICE DATED 22.01.2013 ISSUED UNDER SECTION 263 OF THE ACT BY THE COMMISSIONER OF INCOME TAX (CENTRAL) KOCHI.

ANNEXURE I : TRUE COPY OF THE REPLY DATED 23.02.2013 FILED BEFORE THE COMMISSIONER OF INCOME TAX (CENTRAL) KOCHI.

ANNEXURE J : TRUE COPY OF THE REPLY DATED 23.02.2013 FILED BEFORE COMMISSIONER OF INCOME TAX (CENTRAL) KOCHI.

ANNEXUFRE K : TRUE COPY OF THE ORDER DATED 30.03.2013 PASSED UNDER SECTION 263 OF THE ACT BY THE COMMISSIONER OF INCOME TAX (CENTRAL) KOCHI.

ANNEXURE L : TRUE COPY OF THE FORM OF APPEAL AND GROUNDS OF APPEAL DATED 25.04.2013 FILED BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, ERNAKULAM.

ANNEXURE M : TRUE COPY OF THE ARGUMENT NOTE FILED BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

ANNEXURE N : TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH DATED 05.09.2013.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

I.T.A. Nos.30 & 49 of 2014

Dated this the 21st day of July, 2015

<u>JUDGMENT</u>

<u>Antony Dominic,J.</u>

These appeals are filed by the assessee challenging the common order passed by the Tribunal dismissing ITA Nos.257 and 258 of 2013. The subject matter of these appeals relate to the assessment years 2009-2010 and 2006-2007 respectively.

2. After scrutiny assessment was completed and notices were issued to the assessee under Section 263 of the Income Tax Act, proposing to revise the assessment orders passed against the assessee. Objections filed by the assessee was overruled and orders were passed by the Commissioner exercising his power under Section 263 of the Act. Assessee filed appeals before the Tribunal which were dismissed by the common order dated 5.9.2013. It is challenging these orders, the appeals are filed.

3. We heard the learned counsel for the appellant and the learned Senior Counsel appearing for the revenue.

4. The main contention raised by the counsel for the

appellant is that the Tribunal did not examine the matter in the manner it should have. It is also the case of the assessee that invocation of the power under Section 263 of the Act itself was illegal and that even on merits the order passed by the Commissioner was untenable. It is stated that since the Tribunal did not examine the merits of the contentions ad has not exercised its appellate power in the manner it should have, the order passed is untenable and require to be set aside.

5. These contentions were refuted by the learned Senior Counsel appearing for the revenue.

6. We have gone through the common order passed by the Tribunal. Reading of the order shows that the Tribunal has made reference to few judgments cited before it and finally concluded that the Commissioner has rightly exercised his jurisdiction under Section 263 of the Act. However, the Tribual has not dealt with any of the contentions raised by the appellant on the merits of the matter. In other words, in so far as the contentions of the appellant on the merits of the issue, which were urged in the appeal memorandum are concerned, there is total non-application of mind on the part of the Tribunal. This

necessitates re-consideration of the appeal by the Tribunal.

7. In that view of the matter, we set aside the orders impugned and the appeal will stand remitted to the Tribunal with a direction to examine and deal with merits of the other contentions raised by the appellant and to pass orders dealing with these contentions.

Appeals are disposed of accordingly.

Sd/-

ANTONY DOMINIC
JUDGE

Sd/-

SHAJI P. CHALY
JUDGE

smv