IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

I.T.A.No. 42 of 2014 ()

AGAINST THE ORDER IN I.T(SS)A NO.01/COCH/2006 of I.T.A.TRIBUNAL,COCHIN BENCH DATED 07.06.2013.

APPELLANT/ASSESSEE/APPELLANT:

MARUTHI BABU RAO JADHAV,
PROPRIETOR, DHANALAKSHMI REFINERIES,
SHANTHAPURAM LODGE, CALICUT ROAD,
PERINTHALMANNA - 679 322.

BY ADVS.SRI.K.ANAND (SR.)
SMT.LATHA KRISHNAN

RESPONDENT/REVENUE/RESPONDENT:

THE DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, CALICUT - 673 001.

BY SRI.P.K.R MENON (SR.) STANDING COUNSEL FOR INCOME TAX
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

I.T.A. NO.42 OF 2014

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE-A1	ORDER OF THE DEPUTY COMMISSIONER OF INCOME TAX DATED 25.11.2002.
ANNEXURE-A2	TRUE COPY OF ORDER OF CIT(APPEALS) DATED 08.08.2005.
ANNEXURE-A3	TRUE COPY OF ORDER OF INCOME TAX APPELLATE TRIBUNAL DATED 07.06.2013.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

I.T.A.No.42 of 2014

Dated this the 24th day of July, 2015

JUDGMENT

Antony Dominic, J.

The assessee has filed this appeal impugning the order passed by the Income Tax Appellate Tribunal, Cochin Bench in I.T.(SS) A.No.01/Coch/2006 pertaining to the block period 01.04.1990 to 15.11.2000.

2. The assessee was engaged in the business of gold and silver refinery at Perintalmanna. There was a search in his business premises under Sec.133A of the Income Tax Act on 15.11.2000. During the search, cash worth Rs.1.3 Lakhs, 18 gold biscuits and certain documents were recovered. Accordingly, the Assessing Officer passed Annexure-A1 order whereby assessment for the block period 01.04.1990 to 15.11.2000 was completed. An appeal was filed and by Annexure-A2 order, the Commissioner (Appeals) disposed of the appeal, partly allowing the same.

3. Further appeal filed by the assessee before the Tribunal was dismissed by Annexure-A3 order. It is in these circumstances, the assessee has filed this appeal.

4. We heard the learned Senior Counsel for the appellant and the learned Senior Standing Counsel for the Income Tax Department.

5. The first issue that was canvassed before the Tribunal was regarding the assessment of cash balance of Rs.1,30,000/- recovered at the time of search. The assessment of this amount was confirmed by the Tribunal rejecting the case of the assessee that the manager of his brother, who is the proprietor of a Jewellery shop, had handed over the above amount on the day previous to the search. This was rightly rejected stating that a search was simultaneously conducted in the premises of the brother of the assessee and that nothing was recovered evidencing the payment claimed by the assessee and that the assessee also had not maintained any books of accounts evidencing the receipt of the amount.

6. The second issue canvassed was regarding the assessment of unexplained investment in gold biscuits.

Admittedly, during the search, 18 gold biscuits worth Rs.9,36,000/- were recovered. The assessee surrendered a sum of Rs.4,66,000/- as his undisclosed income. In so far as the balance amount of Rs.4,70,000/- is concerned, the assessee claimed that the said amount was received from his brother and his brother's source of payment was explained by stating that his brother had withdrawn Rs.3 lakhs from his Jewellery shop and the balance of Rs.1.70 lakhs was realised by sale of his wife's jewellery. This contention of the assessee was rejected by all authorities stating that the assessee did not maintain any books of accounts regarding receipt of Rs.4.70 lakhs from his brother. The assessee did not also having any sales tax registration and there was nothing to connect the unexplained investment of Rs.4.70 lakhs was that of his brother, or the sale of jewellery.

7. The third issue was relating to assessment of excess expenditure over receipts. During the search, a note book containing the cash transaction between 03.09.2000 to 14.11.2000 was recovered, which showed receipts to the tune of Rs.73,345/- and total expenditure of Rs.7,02,227/-. The claim of the assessee was that the excess amount represented

his agricultural income. However, he did not furnish any material to substantiate the receipt of agricultural income and no material regarding the agricultural income was also available.

8. The assessee raised a further ground that the excess amount of Rs.6,28,882/- should be treated as loss from business. However, that contention was rightly rejected by the Tribunal stating that an amount assessed as investment from undisclosed source cannot be treated as loss from business. The last contention raised by the assessee was that the income determined for the assessment year 1994-1995 to 1999-2000 after giving effect to the order of the CIT(A) was less than the non-taxable limit in each of the assessment years and therefore are liable to be excluded from undisclosed income. This contention was also rejected by the Tribunal referring to Sec.158BB (1)(c) of the Act.

9. All these contentions raised by the assessee have been concurrently rejected by the orders of the Authorities, which are based on finding of fact, and we do not see any question of law arising for the consideration of this Court.

Therefore the appeal fails and is dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-