

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

ITA.No. 136 of 2008 ()

AGAINST THE ORDER IN ITA 194/COCH/99 of INCOME TAX APPELLATE
TRIBUNAL,COCHIN BENCH DATED 09-12-2002

APPELLANT:

THE COMMISSIONER OF INCOME TAX
THIRUVANANTHAPURAM

BY ADV.SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT:

M/S. KERALA KAUMUDI (P) LIMITED,
THIRUVANANTHAPURAM

R1 BY ADV. SRI.SAJI VARGHESE

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE – A : TRUE COPY OF THE ORDER OF THE ASSESSING OFFICER DATED 29.03.1993.

ANNEXURE – B : TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 30.12.1994.

ANNEXURE – C : CERTIFIED COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 09.12.2002.

ANNEXURE – D : TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 9.1.1987 FOR A.Y. 1983-84.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

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

I.T.A. No.136 of 2008

Dated this the 30th day of July, 2015

JUDGMENT

Antony Dominic,J.

This appeal is filed by the Revenue challenging the order passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA No.194 of 1999 concerning the assessment year 1982-1983. By the said order, the Tribunal dismissed the appeal filed by the Revenue seeking to set aside the order passed by the Commissioner of Income Tax (Appeals) whereby the appeal of the assessee was allowed and Annexure-A assessment order was set aside.

2. Briefly stated the facts of the case are that the assessee company is engaged in printing and publishing of a newspaper by name 'Kerala Kaumudi'. In the assessment year 1982-1983, the assessee imported from Germany a Rotary Printing Press. This was installed by the assessee using local labour. On that basis, the assessee claimed investment allowance and

depreciation in the assessment year 1982-1983, which was allowed by the Assessing Officer.

3. In the subsequent assessment year 1983-1984, the assessee claimed deduction of Rs.68,371/- as revenue expenditure towards installation of the printing press in question. That was disallowed by the Assessing Officer. In the appeal filed, the Commissioner of Income Tax (Appeals) held it to be a capital expenditure on the basis that installation of the machinery was not completed in the previous assessment year.

4. Relying on that observation made in the appellate order, the assessment for the year 1982-1983 was re-opened and in Annexure-A order, the Assessing Officer withdrew the investment allowance and depreciation originally granted. This order was set aside by the Commissioner of Income Tax (Appeals), whose order was confirmed by the Tribunal. It is in these circumstances, the Revenue has filed this appeal.

5. We heard the learned Standing Counsel for the Revenue and the learned Senior Counsel for the assessee.

6. The premise on which the assessment was re-opened was that the installation of the Rotary Printing Press was not

completed in the assessment year 1982-1983 and that therefore, the investment allowance and depreciation granted in the assessment order was irregular.

7. Facts are evident from the orders passed by the Commissioner and the Tribunal, which show that on import of the machinery, using local labour, the assessee had installed it. To prove that the Press was installed and commissioned, the assessee had produced before the Assessing Officer a bill issued it for undertaking printing work. However, the Assessing Officer declined to act upon that bill stating that it lacked any evidentiary value. The reason for such conclusion was that it was issued to a related company. On this aspect, the Tribunal has rightly held that in the absence of any other justifiable vitiating circumstances, the Assessing Officer was wrong in declining to accept the bill produced by the assessee. We fully agree with the Tribunal on this finding. This therefore, shows that the fundamental basis on which the assessment was re-opened itself was untenable. If that be so, the Tribunal was justified in upholding the order of the Commissioner setting aside Annexure – A, the re-opened assessment order issued for

the assessment year 1982-1983. Such being the case, we do not see any question of law arising in this appeal.

Appeal fails and accordingly it is dismissed.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

smv