IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 7182 of 2015 (W)

PETITIONER(S):
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1. G.SUNILKUMAR,
   SUNEETRON AGENCIES, M.C.ROAD,
   THIRUVALLA - 689 101.

2 SMT.INDU SUNILKUMAR,
   SRAVANAM, POWER HOUSE ROAD,
   THIRUVALLA - 689 101.

BY ADV. SRI.RAMESH CHERIAN JOHN

RESPONDENT(S):
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1. THE DEPUTY DIRECTOR OF INCOME TAX CENTRAL CIRCLE,
   PUBLIC LIBRARY BUILDINGS, SASTHRI ROAD,
   KOTTAYAM - 686 001.

2. THE COMMISSIONER OF INCOME TAX (APPEALS)-IV,
   KERA BHAVAN, KOCHI- 682 018

3. THE ADDITIONAL DIRECTOR OF INCOME TAX,
   PALAKKAD - 678 014.

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2003-04 IN THE CASE OF THE 1ST PETITIONER.**
EXT.P2 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2004-05 IN THE CASE OF THE 1ST PETITIONER.**
EXT.P3 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2005-06 IN THE CASE OF THE 1ST PETITIONER.**
EXT.P4 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2006-07 IN THE CASE OF THE 1ST PETITIONER.**
EXT.P5 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2007-08 IN THE CASE OF THE 1ST PETITIONER.**
EXT.P6 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2008-09 IN THE CASE OF THE 1ST PETITIONER.**
EXT.P7 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2009-10 IN THE CASE OF THE 1ST PETITIONER.**
EXT.P8 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2003-04 IN THE CASE OF THE 2ND PETITIONER.**
EXT.P9 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2004-05 IN THE CASE OF THE 2ND PETITIONER.**
EXT.P10 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2005-06 IN THE CASE OF THE 2ND PETITIONER.**
EXT.P11 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2006-07 IN THE CASE OF THE 2ND PETITIONER.**
EXT.P12 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2007-08 IN THE CASE OF THE 2ND PETITIONER.**
EXT.P13 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2008-09 IN THE CASE OF THE 2ND PETITIONER.**
EXT.P14 -	**TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2009-10 IN THE CASE OF THE 2ND PETITIONER.**
EXT.P15 -	**TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2003-04 FILED BY THE 1ST PETITIONER.**
EXT.P16 -	**TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2004-05 FILED BY THE 1ST PETITIONER.**
EXT.P17 -	**TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2005-06 FILED BY THE 1ST PETITIONER.**
EXT.P18 -	**TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2006-07 FILED BY THE 1ST PETITIONER.**
EXT.P19 -	**TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2007-08 FILED BY THE 1ST PETITIONER.**
EXT.P20 -	**TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2008- FILED BY THE 1ST PETITIONER.**
EXT.P21 -	**TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2009-10 FILED BY THE 1ST PETITIONER.**
EXT.P22 -	**TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2003-04 FILED BY THE 2ND PETITIONER.**

EXT.P23 - TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2004-05 FILED BY THE 2ND PETITIONER.

EXT.P24 - TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2005-06 FILED BY THE 2ND PETITIONER.

EXT.P25 - TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2006-07 FILED BY THE 2ND PETITIONER.

EXT.P26 - TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2007-08 FILED BY THE 2ND PETITIONER.

EXT.P27 - TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2008-09 FILED BY THE 2ND PETITIONER.

EXT.P28 - TRUE COPY OF THE APPEAL FOR THE ASSESSMENT FOR THE YEAR 2009-10 FILED BY THE 2ND PETITIONER.

EXT.P29 - TRUE COPY OF THE SUMMARY OF ARGUMENTS OF THE 1ST PETITIONER FOR THE YEAR 2003-04.

EXT.P29A - TRUE COPY OF THE SUMMARY OF ARGUMENTS (PRELIMINARY) OF THE 2ND PETITIONER FOR THE YEAR 2003-04 TO 2009-10.

EXT.P30 - TRUE COPY OF THE LETTER DT.23-1-2015 FILED BEFORE THE 2ND RESPONDENT.

EXT.P31 - TRUE COPY OF THE LETTER DT.23-1-2015 FILED BEFORE THE 2ND RESPONDENT.

EXT.P32 - TRUE COPY OF THE LETTER DT.5-2-2015 FILED BEFORE THE 2ND RESPONDENT.

EXT.P33 - TRUE COPY OF THE POSTING NOTICE DT.23-2-2015 ISSUED TO THE 1ST PETITIONER.

EXT.P34 - TRUE COPY OF THE POSTING NOTICE DT.23-2-2015 ISSUED TO THE 2ND PETITIONER.

EXT.P35 - TRUE COPY OF THE JUDGMENT DT.25-1-2012 IN WPC NO.34655 OF 2011.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.7182 of 2015

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Dated this the 6th day of March, 2015

J U D G M E N T

Against Exts.P1 to P14 orders passed under Section 143 (3) read with Section 153 C of the Income Tax Act, the petitioners have preferred Exts.P15 to P28 appeals before the 2nd respondent. One of the contention taken by the petitioners in the appeals before the 2nd respondent is that the whole assessment procedure was vitiated on account of the fact that the assessing authority had relied on the materials obtained during the course of the search and the search was not witnessed by any 'Panchas'. It is the contention of the petitioners that on account of there being no 'Panchas' at the time of search, the search proceedings itself is vitiated, and hence, materials obtained during the said search could not be relied upon for the purposes of completing the assessment against the petitioners. It is stated by counsel for the petitioners that the appeals are now proposed to be heard by the 2nd respondent, and the petitioner's request for a cross examination of witnesses, so as to substantiate his contentions with regard to the jurisdiction of the authorities who conducted the search, and the legality of the search itself, has not been gone into prior to a consideration of the appeals on merits, In the writ petition, therefore, the petitioners seeks a direction to the 2nd respondent to offer the petitioners an opportunity to cross examine the authorised officer and witnesses for the purposes of substantiating their contention regarding the illegality of the search, prior to the adjudication of the appeals on merits.

2. I have heard Sri.Ramesh Cheiran John, the learned counsel for the petitioners and Sri.Jose Joseph, the learned Standing counsel for the respondent bank.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, and in particular, the submissions with regard to the issue of legality of the search, that is urged in the appeals filed by the petitioners before the 2nd respondent appellate authority, I am of the view that, it would be incumbent upon the appellate authority to consider the contention of the petitioners with regard to the validity of the search, as also on the aspect of whether the assessing authority had jurisdiction to initiate proceedings under Section 153A on the basis of that search, prior to deciding the issue on merits. The appellate authority would also be required to consider the request

of the petitioners for cross examining the Authorised Officer of the Department in accordance with the provisions of law applicable. I, therefore, dispose the writ petition with a direction to the 2nd respondent appellate authority to consider the said contention of the petitioners, including the contention regarding validity of search and consequent lack of jurisdiction. The appellate authority shall also consider the request of the petitioners for an opportunity to cross examine the witnesses and the Authorised Officer of the Department in accordance with the applicable provisions. The 2nd respondent appellate authority shall do this prior to proceeding with the appeal on merits.

The writ petition is disposed of as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns