

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE B.P.RAY

THURSDAY, THE 30TH JUNE 2011 / 9TH ASHADHA 1933

ITA.No. 42 of 2010()

AGAINST THE ORDER DATED 23/07/2009 IN IT(S& S)A.42/COCH/2005 of
I.T.A.TRIBUNAL,COCHIN BENCH
.....

APPELLANT / APPELLANT

THE COMMISSIONER OF INCOME TAX,
KANNUR.

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

RESPONDENT(S): RESPONDENT

SRI.A.V.MADHAVAN, ASTROLOGER,
SRUTHI, P.O.ANNUR, PAYYANNUR.

ADV. SRI.T.M.SREEDHARAN FOR R
SRI.V.P.NARAYANAN FOR R
SMT.C.K.SHERIN FOR R

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 30/06/2011, ALONG WITH ITA NOS. 63, 125 & 126 OF 2010
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ITA NO.42/2010

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE A : COPY OF ORDER UNDER SECTION 158BC(c) READ WITH SECTION 143(3) DATED 30/07/2001.

ANNEXURE B : COPY OF ORDER OF THE CIT(A) IN ITA 46/CNR/CIT(A)-III/04-05 DATED 09/11/2004.

ANNEXURE C : COPY OF ORDER OF THE TRIBUNAL IN ITA NO.42/COCH/2005 DATED 23/07/2009.

ANNEXURE D : COPY OF SWORN STATEMENT (IN MALAYALAM)

ANNEXURE E : FREE ENGLISH TRANSLATION OF MALAYALAM SWORN STATEMENT.

//TRUE COPY//

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR & BHABANI PRASAD RAY, JJ.

I.T.A. Nos.42, 63, 125 & 126 of 2010

Dated, this the 30th day of June, 2011

J U D G M E N T

Ramachandran Nair, J.

The connected appeals filed by the Revenue relate to the very same assessee, who is an Astrologer by profession. During the search conducted in the residence of the respondent assessee on 06/07/1999 the Department seized cash, Fixed Deposit receipts and particulars of Savings Bank accounts relating to undisclosed income of the assessee. The assessee had given a detailed statement admitting that the investments are from professional income received from practice of Astrology. However, in the course of assessment, the assessee put forward a case that substantial amount of deposit though held in the name of himself, wife and children belongs to a Trust by name Jyothi Sadanam engaged in running coaching centre for teaching Astrology and Sanskrit.

In the statement recorded at the time of search, the assessee never had such a case. However the assessee's explanation that funds belonged to the Trust was accepted in first appeal, even though the Trust itself was registered nearly two years after the search i.e. on 01/01/2001. This order was confirmed in second appeal by the Tribunal against which the Revenue has come up with these appeals.

2. During hearing of the appeal filed against block assessment, we felt there is a strong case for the Department because the subsequent case built up by the assessee by introducing the Trust, namely Jyothi Sadanam, does not have any reference in any of the documents seized or the sworn statement recorded by the assessee which was not retracted. We, therefore, suggested the learned counsel whether the assessee is willing to come forward with some kind of settlement so that unnecessary remand and repeated appeals could be avoided. Learned counsel after taking instructions informed us that the assessee is willing to agree for a further

addition of Rs.10,00,000/- (Rupees ten lakhs only), which is a sacrifice from the relief granted by the first appellate authority as well as the Tribunal. Learned Standing Counsel left the matter for our decision i.e. whether to accept the assessee's offer for settlement or not. Considering the partial relief granted in the assessment itself and the offer made by the assessee, we feel the offer made by the assessee is reasonable. Further, if at all we accept the argument of the Department, we have to only remand the matter to the first appellate authority, which will lead to another round of litigation. We, therefore, accept the offer made by the assessee and allow ITA No.42/2010 filed by the Department in part by modifying the orders of the Income Tax Appellate Tribunal and the first appellate authority by making a further addition of Rs.10,00,000/- (Rupees ten lakhs only) in the block assessment. The Assessing Officer will modify the revised orders issued by limiting the relief granted by the CIT (Appeals), which is confirmed by the Tribunal in respect of

investment in FD receipts as relatable to Trusts from Rs.30,18,092/- to Rs.20,18,092/-. All other reliefs granted by the first appellate authority and the Tribunal in revised orders will stand confirmed. Revised orders will be issued at the earliest after notice to the assessee.

ITA Nos.63, 125 and 126 of 2010 pertain to follow up assessments based on interest and other income in respect of investments assessed in block assessment. In view of the above, these appeals are allowed by vacating the orders of the Tribunal and that of the first appellate authority and by remanding the matter to the Assessing Officer for making revised assessment based on the revision in block assessment completed by him based on our directions above.

These Appeals are allowed as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(BHABANI PRASAD RAY, JUDGE)