

IN THE HIGH COURT OF KERALA AT ERNAKULAM

ITA.No. 359 of 2010

1. THE COMMISSIONER OF INCOME TAX,  
... Petitioner

Vs

1. SHRI.K.V.DAMODARAN,  
... Respondent

For Petitioner :SRI.JOSE JOSEPH, SC, FOR INCOME TAX

For Respondent : No Appearance

The Hon'ble MR. Justice C.N.RAMACHANDRAN NAIR  
The Hon'ble MR. Justice B.P.RAY

Dated :01/11/2010

O R D E R

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

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I.T. A. No. 359 of 2010  
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Dated this the 1st day of November, 2010

JUDGMENT

Ramachandran Nair, J.

The question raised is whether the Tribunal was justified in upholding the order of the CIT (Appeals) cancelling the addition made in block assessment after search. The deletions pertain to income assessed for several years prior to the year of search. The department has heavily relied on the statement recorded from the assessee and one

Sri. Muraleedharan about the suppression practised in the turnover and in the income. However, admittedly assessee destroyed all the records and department has not seized any records. Therefore the Tribunal considered the issue and found the addition as one solely based on the statement of the assessee recorded under Section 132(4) of the I.T. Act which of course has evidentiary value. Standing counsel appearing for the revenue relied on the judgment of this Court, to which one of us (C.N.R. (J)) was a party, in another case and submitted that the statement recorded from the assessee during the course of search can be

the basis for assessment. However, we find from the Tribunal's order that they noticed that the statements recorded from the assessee and Sri. Muraleedharan during the course of search were not consistent and hence unreliable. So much so, we do not think there is any justification for us to interfere with the order of the Tribunal because unreliable statement cannot be the sole basis for making addition in block assessment. Standing counsel appearing for the revenue further submitted that besides the statement, department has found out in the course of search several investments in buildings and therefore statements are only used for corroborative purposes. In principle we agree with the contention of standing counsel because if materials are gathered on investments and if the department is able to establish that these are unexplained investment or expenditure justifying addition based on materials gathered on search, certainly they can do so and statements can be relied on for corroboration. However, we do not find such an issue raised or decided by the Tribunal, and so much so this issue does not arise for our consideration in an appeal filed under Section 260A of the Act. Since we do not find any ground to entertain

the appeal, as there is no substantial question of law arising from the order of the Tribunal, we dismiss the appeal. However, we make it clear that if the search had yielded materials pertaining to investments in buildings, or expenditure, and the assessee could not explain, then it is open to the revenue to file an application for rectification before the Tribunal.

(C.N.RAMACHANDRAN NAIR)  
Judge.

(BHABANI PRASAD RAY)  
Judge.