

IN THE HIGH COURT OF KERALA AT ERNAKULAM

ITA.No. 1805 of 2009()

1. M/S INTERNATIONAL BUSINESS,SERVICES

... Petitioner

Vs

1. THE COMMISSIONER OF INCOME TAX,

... Respondent

For Petitioner :SRI.P.BALAKRISHNAN (E)

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

The Hon'ble MR. Justice C.N.RAMACHANDRAN NAIR

The Hon'ble MR. Justice K.SURENDRA MOHAN

Dated :04/10/2010

O R D E R

C.N.RAMACHANDRAN NAIR &
K. SURENDRA MOHAN, JJ.

I.T.A. NO:1805 OF 2009

Dated this the 4th October, 2010.

JUDGMENT

Ramachandran Nair, J.

During hearing of this appeal, the counsel for the assessee brought to our notice a notice issued by the Assessing Officer under Section 148 proposing to reopen the assessment to bring to the entire income received under non-competition agreement under Section 28(v)(a) of the Income Tax Act. The details as to whether

income is accounted on accrual basis or on cash basis and the dates and the order in which the amounts were received are not clear from the orders issued for this year. In any case in view of the proposal of the Assessing Officer for reopening earlier year's assessments, we feel in order to facilitate it the assessment for this year also can be set aside and remanded to the Assessing Officer for consideration along with the assessments reopened for other years. Accordingly appeal is allowed by setting aside the order of the Tribunal and that of the lower authorities and we remand the issue to the Assessing Officer for reconsideration along with

assessments reopened for the preceding years for considering income received under the non-competition agreement.

2. The next question raised is assessee's claim for depreciation in respect of furniture and fixtures etc provided in the building given on rent by the assessee. The Tribunal took the view that assessee is not entitled to depreciation because there is no scope for granting depreciation in the assessment of income under the head property. We do not find any ground to interfere with the Tribunal's finding because the furniture and other articles in respect of which depreciation is claimed are not used in business but are facilities provided in a rented out building. Consequently the appeal on this issue is dismissed.

C.N.RAMACHANDRAN NAIR
Judge

K. SURENDRA MOHAN
Judge

