IN THE HIGH COURT OF KARNATAKA, AT BANGALORE

DATED THIS THE 12TH DAY OF JUNE, 2009

PRESENT

THE HON'BLE MR. JUSTICE V.GOPALAGOWDA

AND

THE HON'BLE MR. JUSTICE RAVI MALIMATH

I.T.A. No. 212 OF 2009

BETWEEN:-

SRI VADDANAHAL RAJANNA (HUF),
PROP: VADDANAHAL SHIVALINGAPPA & CO.,
ARECANUT MERCHANT,
A.P.M.C. YARD,
SHIMOGA.

APPELLANT

(BY SRI R. RAMA MURTHY FOR VASAN ASSCS., ADV.,)

AND:-

THE ASST. COMMISIONER OF INCOME TAX,
CIRCLE-1,
SHIMOGA.

RESPONDENT

THIS I.T.A. IS FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 29-08-2008 PASSED IN ITA NO. 536/BNG/2007, FOR THE ASSESSMENT YEAR 2004-2005, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO (I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN? (II) ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE IT AT BANGALORE IN ITA NO. 536/BNG/2007,DATED

29.08.2008 CONFIRM THE ORDERS OF THE ASSESSING OFFICER.

This appeal is coming on for orders this day, GOPALAGOWDA, J., made the following:

ORDER

This appeal is along with Misc.Cvl. 9372/09 to condone the delay of 107 days in filing the appeal is filed by the Assessee. Since we are not interfering with the impugned order of the Tribunal, accepting the reasons in support of the affidavit filed for condonation of delay, the delay in filing the appeal is condoned and this appeal is taken up for admission.

2. Heard Sri R.Rama Murthy, learned counsel appearing for the appellant. Correctness of the impugned order is questioned in this appeal by framing following substantial questions of law and urged grounds in support of the same.

(i) Whether, on the facts and in the circumstances of the Appellant's case, order of the Appellate Tribunal is not one of perverse?

(ii) Whether, on the facts and circumstances of the Appellant's case, whether the Tribunal is justified in upholding the addition made by the Assessing Officer?

(iii) Whether, order of the Tribunal is substantial in law?

3. It is also contended by the learned counsel for the appellant that the aforesaid questions of law would arise for consideration of this Court and therefore requested to answer the same in favour of the appellant – assessee.

4. Though three substantial questions of law are framed, only question No.1 referred to above is taken up for consideration. The other two questions depends upon the finding that will be recorded on the other questions of law.

5. One of the ground of attack of the impugned order in support of the substantial question of law is that the Tax Appellate Tribunal did not appreciate the contention of the appellant that the order of assessment is based on guess work despite furnishing the particulars of the purchases made by the appellant, which are from range of Rs.25/ to Rs.57/-, while selling price was Rs.50 to Rs.60/-. The Assessing Officer has failed to consider the opening stock on

a fiction that entire closing stock of the earlier is valued at higher price and the entire stock is of superior quality.

6. The finding of the Assessing Authority on the basis of the presumption has been upheld by the Tribunal without applying its mind and considering the facts and material evidence produced before the Assessing Authority. Therefore, the Tribunal has failed to appreciate the facts and legal evidence on record while concurring with the finding of the Assessing Authority. Therefore, it is requested by the learned counsel for the Assessee to answer the aforesaid substantial question of law in favour of the assessee and further the suppression of sale value at Rs.15,22,651/- which is assessed by the Assessing Authority has been accepted by the Tribunal without examining the material evidence produced before the Tribunal.

7. With reference to the above legal submissions made by the learned counsel for the assessee, we have examined the case of the appellant to find out as to whether the aforesaid substantial question of law would arise for our

consideration. Our answer should be in the negative against the assessee for the following reasons:

The Tribunal has taken all relevant material evidence produced by the appellant before it such as opening stock in terms of KGs, purchase of Arecanut and selling the same in terms of KGs and the same is referred to in the impugned order. It also verified the goods purchased at different places and the quantity and its price. The Tribunal has recorded its finding of fact in not accepting the case of the appellant by concurring with the order of Assessment Officer for the reason that the assessee is not maintaining proper books of Accounts,. Therefore, the Tribunal has invoked the provisions of Section 145 after pinpointing variation in adopting the low rate sale particularly to the sister concern. This aspect has also been noticed by the Commissioner of Income Tax while recording the monthly statement of purchase sales starting from May 2003 to March 2004 where the maximum purchase price is at Rs. 108 on an average rate for July, 2003 and the opening stock rate adopted at Rs. 149 per kg is found to be doubtful. The Tribunal has made an

observation in its order holding that the observation made by the CIT(A) in his order regarding the exact valuation of the opening stock adopted at Rs.149 per kg whereas the Assessing Officer has bifurcated into inferior and superior quality . Therefore, as per the valuation, it is higher quality of goods. It has also observed that the assessee has not submitted the actual purchases supporting the copies of the bills and the sales supported by copies of sale bills to prove his claim that the sales made to VS and Sons on those particular; date for that particular quality of arecanut the rate was as low as Rs. 50 to Rs.60 per Kg particularly when the sales are made to his sister concerns and made further observation that the assessee has conveniently avoided this details to be filed because it is a colourful device in the form of sale at a lower rate to the sister concern. The Tribunal has accepted the finding of the Assessing Officer based on proper appreciation of material evidence on record and further adding income of Rs.15,22651/- to fasten the tax liability which is on the basis of the valuation of 42,816 kgs properly indicated in the order of assessment to arrive at

that figure. The concurrent finding of fact recorded by the Tribunal in its order is on the basis of facts and on proper appreciation of legal evidence on record. Therefore, it cannot be said that the finding of the Tribunal is perverse. In our considered view, the finding recorded by the Tribunal is just and proper and based on facts and the material evidence on record and the same does not call for our interference in this appeal. Hence, we hold that the substantial question No.1, framed in this appeal does not arise for our consideration. The appeal is devoid of merit and the same is dismissed .

Sd/-
Judge

Sd/-
Judge

NM/ck