

Kerala High Court

The State Of Kerala vs M/S. Orma Marble Palace (P) Ltd on 9 June, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

ST.Rev..No. 12 of 2010()

1. THE STATE OF KERALA, REPRESENTED BY
... Petitioner

Vs

1. M/S. ORMA MARBLE PALACE (P) LTD.,
... Respondent

For Petitioner :GOVERNMENT PLEADER

For Respondent :SRI.ISSAC M.PERUMPILLIL

The Hon'ble MR. Justice C.N.RAMACHANDRAN NAIR
The Hon'ble MR. Justice P.S.GOPINATHAN

Dated :09/06/2010

O R D E R

C.N.RAMACHANDRAN NAIR &
P.S.GOPINATHAN, JJ.

.....
S.T. Rev. Nos.12 & 19 of 2010

.....
Dated this the 9th day of June, 2010.

JUDGMENT

Ramachandran Nair, J.

Heard the Government Pleader for the common revision petitioner and counsel appearing for the group companies, the respondents in the connected case. After completion of the sales tax assessments of the respondents for the assessment year 1999-2000, it came to the notice of the Deputy Commissioner that respondents have been subjected to search and block assessment was made for the undisclosed business income under the Income Tax Act. Based on the block assessments completed by the Income Tax Department, the Deputy Commissioner directed revision

of assessment under Section 35 against which respondents filed appeals before the Tribunal. By the time the Tribunal took up the appeals, the block assessments completed under Section 158BC of the Income Tax Act were interfered with by the Commissioner of Income Tax (Appeals) and he cancelled the addition of undisclosed income. Since the Income Tax assessments formed the basis of the order of the Deputy Commissioner, the Tribunal relying on C.I.T.(Appeal)'s order in appeals filed against block assessments completed under the Income Tax Act, allowed the appeals. In fact, Government Pleader has relied on Annexure-D produced in S.T. Rev. No.12/2010 which is a three Member Order issued by the very same Bench in another company's case(of the same group) remanding the matter to the Assessing Officer holding that the matter has to be reconsidered after the Income Tax Appellate Tribunal disposes of appeal filed against order of the C.I.T.(Appeals) relied on by the Tribunal. Review Petition filed by the department before the Tribunal was also turned down.

2. After hearing both sides and after going through the Tribunal's order, we find that the Tribunal has heavily relied on the order of the C.I.T.(Appeals) cancelling the block assessment of the assessee completed under Section 158BC of the Act. In our view, the Tribunal was not justified in treating the order of the C.I.T.(Appeals) as final. Since it is a fact finding authority, it is upto the Income Tax Appellate Tribunal to consider whether the C.I.T.(Appeals)'s order deserves to be modified or reversed. Therefore, we feel the right course that the Sales Tax Appellate Tribunal should have adopted was to remand this matter to the Assessing Officer to wait for finality to be achieved in the Income Tax block assessment through orders of the Tribunal as was done in the case of another company of the same group vide Annexure- D order produced in S.T. Rev. No.12/2010. We, therefore, allow the S.T. Revision cases by setting aside the orders of the Tribunal and with direction to the Assessing Officer to take up the matter afresh based on final orders of the Tribunal issued in the Income Tax appeals. We make it clear that fresh orders of assessment if any should be made considering findings of the Income Tax Tribunal also and after giving sufficient opportunity to the assessee.

C.N.RAMACHANDRAN NAIR Judge P.S.GOPINATHAN Judge pms