IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

RP.No. 234 of 2015 (H)

JUDGMENT DATED 31-05-2004 IN WP(C) 16875/2003
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REVIEW PETITIONER(S)/PETITIONER:

S.K.PILLAI, USHA BELHEAVEN GARDENS,
KOWDIAR, TRIVANDRUM - 695 003.

BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SMT.R.BINDU
SRI.GENS GEORGE ELAVINAMANNIL

RESPONDENT(S)/RESPONDENTS:
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1. THE INCOME-TAX COMMISSIONER,
TRIVANDRUM - 695 001.

2. THE ASSISTANT COMMISSIONER OF INCOME TAX,
INVESTIGATION, KOTTAYAM - 686 001.

3. KHALEEL REHMAN,
MANGALATHU VEEDU, KRISHNAPURAM P.O.,
KAYAMKULAM - 690 533.

4. MANSURAL HAQUE,
MANGALATHU VEEDU, KRISHNAPURAM P.O.,
KAYAMKULAM - 690 533.

5. KAYAMKULAM MUNICIPALITY,
KAYAMKULAM, REPRESENTED BY ITS SECRETARY - 690 533.

R1 & R2 BY GOVERNMENT PLEADER SMT.LILLY K.T.
SRI.JOSE JOSEPH, SC, FOR INCOME TAX
R5 BY ADV. SRI.A.SHAFEEK (KAYAMKULAM)

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
21-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEUXRE A1: CERTIFIED COPY OF THE JUDGMENT DTD.31.5.2004 IN WPC.NO.16875 OF 2003 OF THIS HON'BLE COURT.

ANNEXURE A2: TRUE COPY OF THE PLAINT IN OS.29/2013 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, MAVELIKKARA.

ANNEUXRE A3: TRUE COPY OF THE WRITTEN STATEMENT FILED BY RESPONDENTS 3 AND 4 IN OS.29 OF 2013 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, MAVELIKKARA.

ANNEXURE A4: TRUE COPY OF THE APPLICATION DT.14.10.2014 SUBMITTED BY THE PETITIONER BEFORE THE ASSISTANT COMMISSIONER FOR INCOME-TAX.

ANNEXURE A5: TRUE COPY OF THE COMMUNICATION DTD.10.11.2014 ISSUED BY THE DEPUTY COMMISSIONER FOR INCOME TAX REJECTING THE APPLICATION.

ANNEXURE A6: TRUE COPY OF THE COMMUNICATION DTD.1.12.2014 ISSUED BY THE ADDITIONAL COMMISSIONER OF INCOME TAX, RANGE-I, TO THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-I, KOTTAYAM.

ANNEXURE A7: TRUE COPY OF THE ORDER 15.12.2014 ISSUED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-I, KOTTAYAM.

RESPONDENT(S)' ANNEXURES:

ANNEXURE R3(a): TRUE COPY OF THE NO OBJECTION LETTER DTD.3.3.1997 SUBMITTED BY US BEFORE THE 5TH RESPONDENT.

ANNEXURE R3(b): TRUE COPY OF THE PHOTOGRAPH SHOWING THE SHOPPING COMPLEX OF THE PETITIONER AND OUR PROPERTY IN HIS POSSESSION.

ANNEXURE R3(c): TRUE COPY OF ORDER DTD.3.3.2005 OF THE COMMISSIONER OF INCOME TAX (APPEAL).

ANNEXURE R3(d): TRUE COPY OF THE LETTER DTD.2.8.2005 SEND BY THE ADDITIONAL COMMISSIONER OF INCOME TAX, KOTTAYAM TO 2ND RESPONDENT.

CMA.NO.85/2015 IN RP.NO.234/2015

ANNEXURE R3(a): TRUE COPY OF THE OS.NO.158/2007 FILED BY TE PETITIONER.

ANNEXURE R3(b): TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 4TH RESPONDENT.

Msv/

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ANNEUXRE R3(c): TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE PETITIONER IN OS.158/2008.

ANNEXURE R2(a): COPY OF STATEMENT FILED IN THE WRIT PETITION.

ANNEXURE R2(b): TRUE COPY OF THE LETTER ADDRESSED TO THE TAX RECOVERY OFFICER, KOTTAYAM FROM THE ASSESSING OFFICER DTD.20.7.2015.

ANNEXURE R2(c): TRUE COPY OF THE PROCEEDING OF THE TAX RECOVERY OFFICER DTD.3.9.2015.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.
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R.P. No. 234 of 2015
IN
W.P.(C). No. 16875 of 2003
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Dated this the 21st day of November, 2015

JUDGMENT

The review petition is filed seeking a review of the judgment dated 31.05.2004 in WP(C) No.16875 of 2003 so as to clarify that the statement made by the respondents 3 and 4 that payments had been made to the Income Tax department, as recorded in the said judgment, is erroneous.

2. I have heard the learned counsel appearing for the review petitioner, the learned counsel appearing for the 3rd and 4th respondents in the review petition, as also the learned Standing Counsel appearing for the Income Tax Department.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the writ petition was filed challenging an order of attachment that was passed by the Income Tax department in respect of properties belonging to the 4th respondent in the writ petition. The writ petition was disposed by recording the statement of the learned Standing Counsel for the Income Tax Department that the attachment had been lifted and on finding, therefore, that there was no attachment at the time of disposing the writ petition. In the judgment, the statement of counsel for respondents 3 and 4 to the effect that, they had made payments to the Income Tax Department was also recorded. In response to the review petition now filed by the writ petitioner, a statement has been filed by the learned Standing Counsel for the Income Tax Department, clarifying that the statement rendered at the time of disposal of the writ petition that the attachment had been lifted was a reference to the attachment that had lapsed by efflux of time in terms of Section 281(b) of the Income Tax Act. I find therefore, that inasmuch as the judgment dated 31.05.2004, closed the writ petition after recording the statement of Standing Counsel for the Income Tax Department, that there was no attachment in force, there is no new factual aspect warranting a review of the said finding in the judgment. Counsel for the review petitioner, however, points out that the statement of counsel for respondents 3 and 4, to the effect that payments had been made to the Income Tax Department, which was recorded in the said judgment, is causing some confusion in the civil litigation, that is pending between the petitioner and the respondents 3 and 4. Taking note of the said submission, while dismissing the review petition, I make it clear that the judgment dated 31.05.2004 of this Court in WP(C) 16875 of 2003 has not pronounced on the correctness of the statement made by counsel for respondents 3 and 4 that payments have been made to the Income Tax Department. If the review petitioner has a case that the payments have not been made by the respondents 3 and 4 to the Income Tax Department, it is for him to establish these facts independently before the Civil Court, where proceedings are stated to be pending between the petitioner and respondents 3 and 4.

sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /21.11.15