

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

WA.No. 1673 of 2008 (C) IN OP 23177/2002

AGAINST THE ORDER/JUDGMENT IN OP 23177/2002 of HIGH COURT OF KERALA
DATED 08-01-2008

APPELLANT(S)/RESPONDENTS:

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1. THE COMMISSIONER OF INCOME TAX,
KANNUR.
 2. THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 2 (1), KANNUR.

BY ADVS. SRI. P. K. RAVINDRANATHA MENON (SR)
SRI. GEORGE K. GEORGE, SC FOR IT

RESPONDENT(S)/PETITIONER:

M/S. MUTHAPPAN ENTERPRISES, ABKARI
ABKARI CONTRACTORS, ANANGOOR, KASARGODE DISTRICT
REPRESENTED BY K. G. ARVINDAKSHAN S/O. GOVINDAN-
MANAGING PARTNER.

R BY ADV. SRI. T. M. SREEDHARAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.1673 of 2008

Dated this the 12th day of June, 2015

JUDGMENT

Antony Dominic, J.

1.This writ appeal is filed by the respondents in OP.23177/02. The original petition was filed by the respondent herein, seeking to challenge Ext.P8 order passed by the first appellant under section 220 (2A) of the Income Tax Act to the extent waiver of interest as provided therein was limited up to March, 1996. By the judgment under appeal, learned single Judge upheld the claim of the respondent and directed him entitled to the benefit of waiver of interest for the period up to the date provided for payment of tax under the revised order and demand issued on the basis of the Tribunal's order. It is this judgment which is under challenge before us.

2.We heard learned senior standing counsel for the appellants and the learned senior counsel appearing for the respondent.

3.Briefly stated facts of the case are that the respondent was a firm engaged in the business of

arrack. Though it was assessed as a “registered firm” in the previous years, for the assessment years 1991-92 and 1992-93, the respondent firm was assessed as “unregistered”. The Commissioner of Income Tax (Appeals) allowed the appeal filed by the assessee and directed the Assessing Officer to allow registration to the assessee for both years. On a further appeal by the Revenue to the Tribunal, the order of the Commissioner was reversed and the order of the Assessing Officer was restored.

4. On the demand raised under section 143(3) of the Act, the assessee was made liable to pay interest under section 220(2). It was thereupon that the assessee filed petition under section 220 (2A) for waiver of the interest demanded. In Ext.P8 order that was passed, the Commissioner took the view that though the appeal filed by the Department was decided by the Tribunal in its favour on 20.5.1998, the issue was already decided by this Court in Narayanan & Co. v. Commissioner of Income Tax [223 ITR 209] by judgment dated 14.3.1996. Accordingly, the Commissioner held that the pendency of the Department's appeal in the

Tribunal against the assessee was only a procedural matter and therefore the assessee is entitled to waiver of interest only up to March, 1996, when Narayanan (supra) was decided. This view taken by the Commissioner was set aside by the learned single Judge, against which judgment, this appeal is filed.

5. Section 220 (2A) contains three conditions, satisfaction of which are required for the Commissioner to reduce or waive the amount of interest, viz., (i) payment of such amount would cause genuine hardship to the assessee (ii) default in the payment of the amount on which interest is payable was due to circumstances beyond the control of the assessee and (iii) that the assessee has co-operated in any enquiry relating to the assessment or any proceedings for the recovery of any amount due from him.

6. Reading of the order shows that the Commissioner himself has accepted the position that in the case of the respondent, all the aforesaid conditions are satisfied. However, the Commissioner limited the

benefit of waiver only up to March, 1996 and the reason thereof is that this Court has, in Narayanan (supra) decided the issue against the assessee therein by judgment dated 14.3.1996 and that the case of the respondent is covered by that judgment.

7. Thus, though the Commissioner has accepted that the three conditions provided for in section 220(2A) are satisfied, he has chosen to limit the benefit of waiver to a particular period. While examining the validity of that order, what is relevant to be examined is whether the reason assigned by the Commissioner for restricting waiver is valid or not. On such examination, it is seen that in March, 1996, though this Court decided the case of Narayanan (supra), the favourable appellate order obtained by the assessee herein in an appeal filed by them, entitling them for assessment treating the firm as a registered one, was remaining valid. That order was invalidated by the Tribunal only on 20.5.1998, in the appeal filed by the Revenue. In other words, it was only on 20.5.1998, the assessee became disentitled to assessment on the status of a registered firm.

8.The fact that this court has decided the issue in the case of Narayanan (supra) is of no consequence at all till 20.5.1998 when the appeal was decided by the Tribunal. This, therefore, shows that the reason which weighed with the Commissioner to restrict the benefit of waiver till March, 1996 is absolutely untenable.

9.It was in the aforesaid circumstances that the learned single Judge interfered with the order and directed that the assessee be given the benefit of waiver up to the date provided for payment under the revised order and demand issued on the basis of the Tribunal's order. In our view, this conclusion of the learned single Judge does not suffer from any illegality justifying interference in appeal.

Appeal fails and it is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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PS to Judge