IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WA.No. 1054 of 2011 ( )

AGAINST THE JUDGMENT IN WP(C) 6518/2011 of HIGH COURT OF KERALA
DATED 06-07-2011
....

APPELLANT(S)/PETITIONER:

RAJU K.THOMAS,
KALLOTH RIVER VIEW,
VADASSERIKKARA, PATHANAMTHITTA.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENT(S)/RESPONDENTS:
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1. COMMERCIAL TAX OFFICER (WC),
DEPARTMENT OF COMMERCIAL TAXES, PATHANAMTHITTA-689645.

2. THE INTELLIGENCE OFFICER (IB),
DEPARTMENT OF COMMERCIAL TAXES, PATHANAMTHITTA-689645.

BY SR. GOVT. PLEADER SRI. LIJU V. STEPHEN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OKB

THOTTATHIL B. RADHAKRISHNAN & K. HARILAL, JJ.

Writ Appeal No.1054 of 2011

Dated this the 27th day of March, 2015.

JUDGMENT

Thottathil B. Radhakrishnan, J.

1. Heard.

2. This appeal is by the writ petitioner. He proceeded to construct a residential house. He was ultimately accused by the department of not having deducted tax at source from the contractor. By judgment issued today in W.A. No.1149 of 2012, we have relegated the contractor to statutory remedies as against the final order of re-assessment in his case. We had also noted that the contractor was permitted to pay tax at compounded rate after giving him registration with retrospective effect.

3. On the totality of the facts and circumstances, though it may be technically correct for the department to state that the appellant in this writ appeal ought to have deducted tax at source, we

think, it will be too far fetched to impose any penalty or to require the said owner of the building to pay any portion of the tax due. In the yardsticks of justice, we think that this is an eminently fit case, where proceedings ought to be dropped as against the owner of the building, particularly, when the proceedings against the contractor continues following the judgment issued in W.A.No.1149 of 2012.

For the aforesaid reasons, this writ appeal is allowed and, as a result, all proceedings against the appellant as were impugned in W.P(C) No.6518 of 2011 will stand quashed.

Sd/-
THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-
K. HARILAL, JUDGE

okb.