IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 38101 of 2008 (J)

PETITIONER :

DR. R.P.PATEL, HAHNEMAN HOUSE,
COLLEGE ROAD, KOTTAYAM.

BY ADVS.SRI.P.BALAKRISHNAN (E)
SRI.RAMESH CHERIAN JOHN

RESPONDENTS :
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1. THE ASSISTANT COMMISSIONER OF INCOME TAX
   CIRCLE-1, KOTTAYAM.

2. THE ASSISTANT REGISTRAR,
   INCOME TAX APPELLATE TRIBUNAL, FIRST FLOOR
   BLOCK CI & C2, KENDRIYA BHAVAN, OPPOSITE CSEZ
   KAKKANAD, COCHIN - 682 037.

3. INCOME TAX APPELLATE TRIBUNAL,
   FIRST FLOOR, BLOCK CI & C2, KENDRIYA BHAVAN,
   OPPOSITE CSEZ, KAKKANAD, COCHIN - 682 037.

4. THE COMMISSIONR OF INCOME TAX
   PUBLIC LIBRARY BUILDING, SHASHTRI ROAD,
   KOTTAYAM - 686001

R1 BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX
BY ADV. SHRI.A.K.JOHN, CGC
R2 BY SRI. NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 38101 of 2008 (J)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DT 29/9/2008.

P2: COPY OF THE FORM OF APPEAL AND GROUNDS OF APPEAL FOR THE ASST. YEAR 1991-92.

P3: COPY OF THE FORM OF APPEAL AND GROUNDS OF APPEAL FOR THE ASST. YEAR 1991/93

P4: COPY OF THE FORM OF APPEAL AND GROUNDS OF APPEAL FOR THE ASST. YEAR 1993-94.

P5: COPY OF THE FORM OF APPEAL AND GROUNDS OF APPEAL FOR THE ASST. YEAR 1994-95.

P6: COPY OF THE FORM F APPEAL AND GROUNDS OF APPEAL FOR THE ASST. YEAR -1995-96.

P7: COPY OF THE COMMUNICATION DT 2/12/2008 FOR THE ASST. YEAR 1991-92.

P8: COPY OF THE LETTER NO. 1567/08 DT 4/12/2008.

P9: COPY OF THE NOTICE DT 13/12/2008 ISSUED BY THE R1.

P10: COPY OF THE STAY PETITION DT 17/12/2008.

P10A: COPY OF THE LOCAL DELIVERY BOOK ACKNOWLEDGING THE STAY PETITION.

P11: COPY OF THE LETTER DT 19/12/2008.

P12: COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT DT 26/12/2008.

P13: COPY OF THE ORDER OF THIS HON'BLE COURT DT 7/7/2009, EXTENDING THE STAY UNTIL FURTHER ORDER.

P14: COPY OF THE GARNISHEE NOTICE DT 8/8/2008 ISSUED UNDER S. 226(3) OF THE ACT.

P15: COPY OF THE GARNISHEE NOTICE DT 8/8/2008 ISSUED UNDER S. 226(3) OF THE ACT.

P16: COPY OF THE JUDGMENT IN WPC N. 24405 OF 2008.

P17: COPY OF THE REPRESENTATION DT 6/7/2012 MADE TO THE ASST. COMMISSIONER OF INCOME TAX, KOTTAYAM (R1)

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P18: COPY OF THE REPRESENTATION DT 16/8/2012 MADE TO THE ASST. COMMISSIONER OF INCOME TAX, KOTTAYAM (R1).

P19: COPY OF THE REPRESENTATION DT 21/8/2012 MADE TO THE ASST. COMMISSIONER OF INCOME TAX, KOTTAYAM (R1).

P20: COPY OF THE PETITION DT 26/2/2013 MADE TO THE R4.

P21: COPY OF THE ORDER DT 6/11/2013 PASSED BY THE R4.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

K. Vinod Chandran, J.

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W.P.(C)No.38101 of 2008

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Dated this the 18th day of February, 2015.

JUDGMENT

1. Petitioner, by the above writ petition, impugn the action of the Tribunal, in refusing to take on file, an appeal filed against Ext.P1 order. The refusal of the Tribunal was on account of the non-payment of court fee, as prescribed under Section 253(6) of the Income Tax Act, 1961. While the petitioner contended that only Rs.500 is payable, since Ext.P1 is an order in 1st appeal, from an order of penalty imposed; the Tribunal was of the view that, the court fee would have to be paid, on the basis of the amount computed and demanded as per clause (c) of sub-section 6 of Section 253.

2. Since the appeals were not entertained, the petitioner was also aggrieved with the demand raised and the garnishee proceedings, which were also challenged in the above writ petition. The writ

petition was admitted and stay was granted. Now the petitioner contends that, the Tribunal has been accepting appeals from penalty orders, on remittance of court fee of Rs.500, as is provided under clause (d) of sub-section (6) of Section 253. However, the appeals are those filed, as early as in 2001 and an expeditious disposal is sought for, especially on the ground of the petitioners advancing age and the petitioners account having been frozen.

3. The brief facts to be noticed are that; during 1991-92 to 1995-96, proceedings for assessment of escaped income was initiated and after assessment, penalty too was imposed. The 1st appeal, filed against the penalty order, ended in Ext.P1 order, reducing the penalty imposed from Rs.50,68,000/- to Rs.38,72,130/-.

4. The assessment as such is not a concern of this writ petition. Notice of demand, for the reduced penalty, was issued at Ext.P9. Garnishee proceedings, Exts.P14 and P15 remained as such; as against the original proceedings. Petitioner has considerable grievance on that

count also. But, in any event, now the matter has been pending for five years and definitely, there would be interest due as per the Act, since the amounts have not been remitted to the Revenue.

5. With respect to the court fee payable, a plain reading of Section 253 (6) would indicate that clauses (a) to (c) speaks of assessment of total income and the amounts demanded now, is not on assessment; but of penalty imposed. Even before this Court the controversy arose as to what would be the court fee payable, on an appeal from penalty; and this Court has admitted the Income Tax Appeals, on remittance of Rs.500 in accordance with; the *in pari materia* provisions under the Kerala Court Fees and Suit Valuation Act,1959.

6. The submission of the learned counsel is that the Tribunal too is, at present, accepting appeals against penalty, on remittance of court fee under Clause (d) of sub-section (6) of Section 253. Hence, the appeals, Exts.P2 to P6, in which Rs.500 each have been paid, shall be accepted to the files of the Tribunal and the same would be

considered, expeditiously. Petitioner and the authorised representative of the Revenue, shall appear before the Tribunal on 3.3.2015. The Tribunal shall take up the matter and after affording reasonable opportunity, dispose of the same, within a period of six months from 3.3.2015. The garnishee orders at Exts.P14 and P15 for the moment shall continue. No demand shall be raised against the petitioner while the appeal is considered and disposed of. The demand, as also the garnishee orders, shall be modified, if any further modification is made by the Tribunal.

Writ petition is disposed off.

K. Vinod Chandran, Judge.

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