

ITEM NO.101

COURT NO.14

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3131/2006

K. RAVEENDRANATHAN NAIR

Appellant(s)

VERSUS

COMMNR. OF INCOME TAX & ORS.
(with office report)

Respondent(s)

WITH

C.A. No. 3130/2006
(With Office Report)

Date : 08/09/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. K. Radhakrishnan, Sr. Adv.
Mr. S. Udaya K. Sagar, Adv.
Ms. Bina Madravan, Adv.
Mr. M. Singh, Adv.
for M/s. Lawyer S Knit & Co, Adv.

Mr. B. V. Balaram Das, Adv.

For Respondent(s) Ms. Rekha Pandey, Adv.
Mr. Ritin Rai, Adv.
Ms. Meenakshi Grover, Adv.
Mr. Anil Katiyar, Adv.

Mr. Ramesh Babu M. R., Adv.

UPON hearing the counsel the Court made the following
O R D E R

By amendment in the Income Tax Act in the year 1998 Section 260A was inserted in the Act providing for statutory appeal against the orders passed by the Income Tax Appellate Tribunal. In this very Section under Sub-Section(2) (b) court fees on such appeals was also prescribed which was fixed at Rs.2,000/-. However, Sub-Section

(2) (b) of Section 260A prescribing the aforesaid fee was omitted by amendment carried out in the said Act w.e.f. 1.6.1999. It was presumably for the reason that insofar as court fee payable on such appeals are concerned, which are to be filed in the High Court, it is the State Legislature which is competent to legislate in this behalf.

In the State of Kerala the law of court fee is governed by the Kerala Court Fees and Suits Valuation Act, 1959 (hereinafter referred to as 'Act, 1959'). Section 52 thereof relates to the fee payable in appeals. Thus, with the omission of clause (b) of Sub-section (2) of Section 260A in the Income tax Act, fee became payable on such appeals as per Section 52. The State Legislature thereafter amended the aforesaid Act, 1959 by amendment Act of 2003 and inserted Section 52A therein which was passed on 6.3.2003. In fact, before that an ordinance was promulgated on 26.10.2002 which was replaced by the aforesaid Amendment Act. The Act categorically provided that Section 52A is deemed to have come into force on 26.10.2002. As per the amended provisions viz. Section 52A of the Act, 1959, the fee on memorandum of appeals against the order of Income Tax Appellate Tribunal or Wealth Tax Appellate Tribunal is to be paid at the rates specified in sub-item (c) of item (iii) of Article 3 of Schedule II. Sub-item (c) of item (iii) of Article 3 of Schedule II reads as under:

(c) Where such income exceeds two lakh rupees	One percent of the assessed income, subject to a maximum of ten thousand rupees.
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It is clear from the above that fee is now payable, where such income exceeds two lakh rupees, @ 1% of the 'assessed income' subject to a maximum of ten thousand rupees.

The question that arose for consideration before the High Court in the impugned judgment against which these appeals arise, was payment of fee as per the aforesaid schedule on the appeals that are filed on or after 26.10.2002. As per the State of Kerala, all appeals which are filed against the order of Income Tax Tribunal or Wealth Tax Appellate Tribunal on or after 26.10.2002 fee is payable as per the aforesaid amended provisions. The appellant herein, however, contended that all those cases which were even pending before the lower authorities i.e. Assessing Officer, Commissioner of Income Tax (Appeals) or Income Tax Appellate Tribunal and orders were passed even before 1.10.1998, the right to appeal had accrued w.e.f. 1.10.1998 and, therefore, such cases would be governed as on the date when the orders were passed by the lower authorities and the court fee would be payable as per the unamended provisions. The High Court has not accepted this plea of the appellant and has held that any appeal 'filed' on or after 26.10.2002 shall be governed by Section 52A of the Act, 1959.

While the validity of the aforesaid order of the High Court is to be tested, another aspect is highlighted by the High Court in the concluding paras of the judgment. It has noticed that court fee which is payable @1% is on the 'assessed income' i.e income which was assessed by the Adjudicating Officer/Assessing Officer meaning thereby the fee is not to be paid on the amount which is

the subject matter of the appeal. In this behalf, the High Court has given the illustration namely where the income is assessed by the Assessing Officer in the sum of Rs. 10 lakhs but the dispute is only in respect of some addition to the tune of Rs.10,000/-, as per the aforesaid provisions the court fees have to be calculated on Rs.10 lakhs which seems to be an absurd situation. Following comments are made by the High Court on the aforesaid aspect:

"30. As we have already held the State Legislature had clearly manifested its intention by the use of the expressions "fee payable on a Memorandum of Appeal filed" in Section 52a. The vested right of appeal subsequently conferred under Section 260A of the Income Tax Act is so far as payment of court fee is concerned is taken away by necessary implication. In other words, the provision of section 52A of the Court Fees and Suits Valuation Act inserted by the Amendment Act of 2003 in that sense has retrospective operation thereby affecting the earlier assessment also.

31. We accordingly hold that in all appeals filed by the Commissioner of Income tax or in any appeal to be filed either, by the Revenue or by the assessee under the Income Tax Act and under the Wealth Tax Act against the orders of the Income Tax Appellate Tribunal from 26.10.2002 Court fee is payable and has to be paid under Section 52A r/w Schedule II Article 3 item (iii) sub-item(C) of the Kerala Court Fees and Suits Valuation Act, inserted by the Kerala Court Fees and Suits Valuation (Amendment) Act, 2003 the view expressed in the office note is sustained and the objection raised by the appellant to the contrary is overruled. We place on record our deep appreciation for the valuable assistance rendered by Sri V.K. Beeran, learned Addl. Advocate General, Sri P.K.R. Menon, learned senior standing counsel for the Revenue and Sri P. Balachandran, who has been specially requested by the court for assistance.

32. Before parting with the matter, we would

like to point out something about legislative draftsmanship in enacting Section 52A and Schedule II Article 3 item (iii) sub-item (c) particularly to the Schedule portion inserted by the Kerala Court Fees and Suits Valuation (Amendment) Act, 2003. Section 52A provided for the court fee payable on the memorandum of appeal filed before the High Court against orders of the Income Tax Appellate Tribunal under the Income Tax Act and the Wealth Tax Act. Under the Income Tax Act, tax is on the total income assessed whereas under the Wealth Tax Act tax is on the net wealth assessed. Schedule II Article 3, item (iii) sub-item (C) though refers to both the enactments court fee is based on the 'total income' of the assessee and computed by the assessing Officer. How can it apply to appeals filed under the Wealth Tax Act where 'total income' has nothing to do with in the matter of assessment? Can any court fee be demanded in a wealth tax appeal based on the said schedule entry? Is there not an ambiguity in this regard?

33. Further, though the legislative has got the power to fix the court fee on appeal on some reasonable basis, in a third appeal (Appeal before the High Court) from the point of view of the assessee, second appeal from the point of view of the revenue what is the significance for the total income assessed? The total income assessed by the assessing officer may or may not survive at the time when the appeal is filed before the High Court. There may be not even have any dispute with regard to the total income assessed not varied. Still, what is the logic in fixing the court fee on appeal based on the total income? It is something like, in a civil appeal filed by a party, court fee is fixed on the entire value of the assets held by that party though the subject matter of the appeal is only a small item of the assets. Under the Kerala Court Fees and Suits Valuation Act (Sections 51 and 52 Explanation I) court fee is payable on the relief claimed in the appeal. What is the reason for this change in Section 52A. Was it the intention of the legislature that in respect of appeal against penalty orders where huge stakes are involved, sub-clauses (C)(b) and (a) of sub-item (C) of item (iii) of Article 3 of Schedule II is to be made applicable or irrespective of the reliefs sought, a fixed court fee of Rs.500/- under sub-clause (d) of sub-item (c) of item (iii) of Article 3 of Schedule II alone need be paid? There are all matters which required urgent attention of

the State Government and if it is considered necessary appropriate amendment has to be made urgently to make the provision beyond any doubt. Now that the State legislature by inserting section 73A by the Amendment Act 2003 exempted State and its Officers from the payment of Court fees in official matters whether such a treatment can be extended to the Central Government and its officials in official matters consistent with the scheme of the Income Tax Act and the Wealth Tax Act is also a matter for consideration by the State Government."

The aforesaid order was passed on 8.3.2004 i.e. more than 11½ years ago. It appears that till date no remedial steps are taken even when the High Court directed that the copy of the said order be sent to the Chief Secretary to the State for perusal and follow up action. In these circumstances, we have inquired from the learned counsel appearing for the State of Kerala as to whether any decision was taken on the aforesaid recommendation of the High Court. Learned counsel wants sometime to seek instructions.

Insofar as main issue is concerned, we have heard the learned counsel for the parties for sometime. However, in order to have holistic view in the matter, we would also like to know the steps that are taken by the State Government on the aspect mentioned above.

List the matters after six weeks as part-heard.

However, in the meantime, status quo order which was passed on 23.4.2007 shall continue to operate.

(Ashwani Thakur)
COURT MASTER

(Renu Diwan)
COURT MASTER