

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

W.A.No. 1689 of 2006 (D)  
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AGAINST THE JUDGMENT IN OP 13631/1999 of HIGH COURT OF KERALA DATED 13-03-2006.

APPELLANT(S)/PETITIONERS IN THE O.P:  
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1. MR. KURIEN JOSE,  
NO.35, CHOICE VILLAGE, TRIPUNITHURA.
2. MRS. ALEYKUTTY EMMANUEL,  
NO.35, CHOICE VILLAGE, TRIPUNITHURA.
3. MRS. ANNAKUTTY MATHEW,  
NO.35, CHOICE VILLAGE, TRIPUNITHURA.
4. MRS. MARY JOSEPH,  
NO.35, CHOICE VILLAGE, TRIPUNITHURA.
5. MRS. PENNAMMA THOMAS,  
NO.35, CHOICE VILLAGE, TRIPUNITHURA.

APPELLANTS 2 TO 5 REPRESENTED BY THE 1ST APPELLANT  
BEING THEIR DULY APPOINTED POWER OF ATTORNEY.

BY ADVS. SRI. ABRAHAM VAKKANAL (SR.)  
SRI. P. GOPINATH  
SRI. PAUL ABRAHAM VAKKANAL  
SRI. ARUL KUMAR. P

RESPONDENT(S)/RESPONDENTS IN O.P:  
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1. THE ASSISTANT COMMISSIONER OF INCOME TAX  
CIRCLE-1, KOTTAYAM.
2. THE COMMISSIONER OF INCOME TAX,  
TRIVANDRUM.

BY SRI. P.K.R MENON, SENIOR STANDING COUNSEL FOR INCOME TAX

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-07-2015, THE COURT  
ON 12.08.2015 DELIVERED THE FOLLOWING:

P.T.O.

W.A.NO.1689 OF 2006

APPENDIX

APPELLANTS' ANNEXURS: NIL

RESPONDENTS' ANNEXURES:

ANNEXURE R2(A): TRUE COPY OF THE COMPUTATION OF TOTAL INCOME FILED  
ALONG WITH THE RETURN FOR ASST. YEAR 1994-95.

ANNEXURE R2(B): TRUE COPY OF THE COMPUTATION OF TOTAL INCOME FILED  
ALONG WITH THE RETURN FOR ASST. YEAR 1995-96.

ANNEXURE R2(C): TRUE COPY OF THE STATEMENT OF VOLUNTARILY DISCLOSED  
INCOME FURNISHED ALONG WITH THE VDIS DECLARATION.

//TRUE COPY//

P.S. TO JUDGE

St/-

**ANTONY DOMINIC  
&  
SHAJI P. CHALY, JJ.**

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**W.A.No.1689 of 2006**  
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**Dated this the 12<sup>th</sup> day of August, 2015**

**JUDGMENT**

**Shaji P. Chaly, J.**

This writ appeal is preferred by the additional writ petitioners against the judgment dated 13.03.2006 of the learned Single Judge in O.P.No.13631 of 1999. The writ petition was originally filed by one Annamma Ouseph, who died during the pendency of the writ petition, consequent to which the appellants, her legal representatives, were impleaded as additional petitioners in the writ petition. The writ petition was filed challenging Ext.P6 order passed by the 2<sup>nd</sup> Respondent, refusing to entertain a refund application finalized by the 1<sup>st</sup> appellant for the assessment years 1994-1995 and 1995-1996 and by the impugned judgment, the learned Single Judge upheld the said order.

2. Brief facts required for the disposal of the writ appeal are as stated hereunder:

3. The writ petitioner, namely late Annamma Ouseph, was the wife of one P.O.Kuriakose, who was an assessee under the Income Tax Act, 1961 (for short, "the Act"). The said P.O.Kuriakose died on 26.06.1995 and for the assessment years 1994-1995 and 1995-1996, the writ petitioner filed returns of income as the legal heir of late Kuriakose before the 1st Respondent and accordingly paid the tax and Surcharge due as per the return amounting to Rs.2,63,060/- and Rs.80,192/- respectively. The 1st Respondent completed the assessment under Sec.143(1)(a) of the Act as per Exts.P1 and P1(a). It was the contention of the writ petitioner that she had adopted wrong figures for calculating part of the additional compensation and part of the interest based on statement obtained from the Land Acquisition Officer. Since there were family disputes, certain documents were not available with the writ petitioner, when she filed the original returns.

4. It was the further contention of the writ petitioner that the State Government had acquired an extent of about 257 cents of agricultural land in Survey No.611/2, 611/3-2 of Lalam Village of Meenachil Taluk. Advance possession of the land after the requisite proceedings were taken on 10.02.1987

and an award was passed by the Deputy Collector, Kottayam, awarding a compensation of Rs.10,56,672-33/-. Out of the aforesaid amount, an amount of Rs.6,76,271/- was received on 15.01.1989 and the balance of Rs.3,80,401/- was received on 02.11.1989. Dissatisfied with the compensation, late P.O.Kuriakose sought Reference before the Additional Sub Court, Kottayam and the Reference Court had awarded an amount of Rs.20,51,248/- inclusive of all the benefits provided under the Land Acquisition Act. Again, out of the said amount, Rs.18,56,270/- was received on 08.04.1993 and the balance of Rs.1,94,978/- on 11.08.1994. Thus, altogether, including the amount awarded by the original authority, late Kuriakose received an amount of Rs.51,73,364/-. But in view of the disbursal of Rs.10,56,672.33/- to the writ petitioner during the assessment years 1994-1995 and 1995-1996, the writ petitioner had filed returns and thereupon the 1st Respondent had completed the proceedings under Sec.143(1)(a) as per his intimation dated 20.03.1997. Thus, the writ petitioner namely Annamma Ouseph had only paid tax due on the compensation awarded by the Land Acquisition Officer, and no other amount was received either by late P.O.Kuriakose or Annamma Ouseph

at that point of time to file returns for the whole amount received under the Land Acquisition proceedings.

5. The writ petitioner's husband late P.O.Kuriakose had executed a will dated 23.04.1988 by which the 1<sup>st</sup> appellant herein was authorised to receive compensation in respect of the land acquisition proceedings. He was an assessee of income tax under the Mattanchery Circle, Ernakulam District. The 1<sup>st</sup> appellant later collected information in respect of the above proceedings and filed declarations under Voluntary Disclosure of Income (VDI) Scheme and paid tax due for the entire amount of compensation received, under the said Scheme, on 31.03.1988, which included the amount of compensation to which late Annamma Ouseph had filed returns for the assessment years 1994-1995 and 1995-1996 and paid tax.

6. It was the further case of the writ petitioner that in the said view of the matter, she had preferred Revision Petitions under Sec.264 of the Act, requesting the 2<sup>nd</sup> Respondent to revise the intimation under Sec.143(1)(a) dated 20.03.1997 for the assessment years 1994-1995 and 1995-1996 and for a direction to refund the amount of

Rs.2,63,060/- and Rs.80,192/- paid by her. However, the 2<sup>nd</sup> Respondent rejected the same by Ext.P6 impugned order dated 09.09.1998 and thus aggrieved by the said order, the writ petition was preferred by late Annamma Ouseph.

7. Even though the Respondents have not filed any counter affidavit in the writ petition, a counter affidavit was filed by the 2<sup>nd</sup> Respondent in the writ appeal basically contending that the petitioner was not entitled to get the reliefs sought for since the proceedings under Sec.143(1)(a) were concluded and therefore there are no circumstances available in order to re-open the same and consider the request made by the petitioner for cancellation of the intimation and to refund the amount paid for the aforesaid assessment years. It was also contended that the option accepted by the 1<sup>st</sup> appellant under the VDI Scheme cannot be re-opened under any circumstances since Secs.69 and 70 of the Finance Act, 1997 prohibited refund of any amount paid under the said Scheme.

8. During the pendency of the writ petition, the petitioner namely Annamma Ouseph died and consequently the appellants herein were impleaded as additional petitioners as

per the order dated 06.03.2006 in I.A.No.2198 of 2006.

9. Heard the learned counsel for the appellants and the learned Senior Standing Counsel appearing for the respondents, Income Tax Department.

10. The learned Single Judge after evaluating the facts and circumstances of the case and the law involved in the subject matter, had arrived at a finding that the appellants are not entitled to get any reliefs sought for since the proceedings pursuant to the returns filed were completed under Sec.143 (1)(a) of the Act by the 1st Respondent. So also the learned Single Judge held that since the 1<sup>st</sup> appellant has paid the amount under the VDI Scheme, it cannot be reopened in view of the prohibition contained under Secs.69 and 70 of the Finance Act, 1997 and therefore the petitioners were not entitled to get the reliefs sought for.

11. We have gone through the pleadings in the writ petition, writ appeal and attendant documents and the counter affidavit filed by the 2<sup>nd</sup> Respondent.

12. Learned counsel for the appellants contended that tax paid by late Annamma Ouseph for the assessment years 1994-1995 and 1995-1996 in view of the tax paid by the 1<sup>st</sup>

appellant under the VDI Scheme, covering the said period also, was liable to be refunded, since it amounted to double taxation against the aforesaid assessment years, which was not contemplated under the Income Tax laws.

13. According to us, so far as tax paid by late Annamma Ouseph is concerned, it was on the basis of the compensation amount received by her under the Land Acquisition proceedings after the death of the original awardee which she was liable to pay for the aforesaid assessment years. Therefore, so far as the payment of tax for the said assessment years are concerned, the same were in accordance with law and did not require any correction in terms of Sec.143 (1)(a) of the Act. We also appreciated the fact that subsequent payment of the tax amount under the VDI Scheme by the 1<sup>st</sup> appellant, s/o late Annamma Ouseph was as per the scheme launched by the Income Tax Department and at that point of time, if he was cautious enough, he should have restricted the payment to the balance amount after deducting the payment made by late Annamma Ouseph for the assessment years 1994-1995 and 1995-1996. Circumstances being so, late Annamma Ouseph could not have sought reopening of the

proceedings finalized under Sec.143(1)(a) of the Income Tax Act, invoking Sec.264 of the Act. We are of the considered opinion that there is no illegality or legal infirmity in the judgment warranting our interference.

Appeal fails and accordingly same is dismissed.

Sd/-  
**ANTONY DOMINIC  
JUDGE**

Sd/-  
**SHAJI P. CHALY  
JUDGE**

//true copy//

P.S. to Judge

St/-