IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 1166 OF 1998(L)

PETITIONER:

M/S. VALLEY ESTATES, THEKKETHATTIL,
KEEZHIKUNNU, KOTTAYAM,
REPRESENTED BY ITS MANAGING DIRECTOR-
MRS. SANTHAMMA ABRAHAM.

BY ADV. SRI.M.PATHROSE MATHAI
SRI.RAMESH JOHN

RESPONDENTS:
----

1. ADDITIONAL AGRICULTURAL INCOME TAX OFFICER, SULTHANBATHERY.

2. DEPUTY COMMISSIONER OF AGRICULTURAL INCOME TAX AND SALES TAX, KOZHIKODE.

3. COMMISSIONER OF AGRICULTURAL INCOME TAX, BOARD OF REVENUE (TAXES), THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. TEK CHAND

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO. 1166/1998

ORDER ON CMP NO. 2066/1998 IN O.P. 1166/1998
// DISMISSED //

22.11.2007. SD/-, P.R. RAMAN, (JUDGE)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF ASSESSMENT ORDER FOR THE YEAR 1987-88 ISSUED BY THE 1ST RESPONDENT.
EXT.P2	TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 1988-89 ISSUED BY THE 1ST RESPONDENT.
EXT.P3	TRUE COPY OF THE ASSESSMENT ORDER FOR THE YEAR 1989-90 ISSUED BY THE 1ST RESPONDENT.
EXT.P4	TRUE COPY OF THE COMMON ORDER OF ADDL. APPELLATE ASST. COMMISSIONER MODIFYING THE ASSESSMENT FOR THE YEARS 1987-88 TO 1989-90 DATED 21.3.1992.
EXT.P5	TRUE COPY OF THE ORDER ISSUED BY THE APPELLATE TRIBUNAL DATED 24TH AUGUST, 1994.
EXT.P6	TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 9.5.1995.
EXT.P7	TRUE COPY OF APPLICATION DATED 23.8.1993 ADDRESSED TO THE 1ST RESPONDENT BY THE PETITIONER.
EXT.P8	TRUE COPY OF ASSESSMENT ORDER DATED 1.4.1994 FOR THE YEAR 1990-91.
EXT.P9	TRUE COPY OF APPELLATE ORDER DATED 29.4.1995 FOR THE YEAR 1990-91.
EXT.P10	TRUE COPY OF NOTICE DATED 31.5.1995 ISSUED BY THE 2ND RESPONDENT.
EXT.P11	TRUE COPY OF THE ORDER DATED 21.6.1995 ISSUED BY THE 2ND RESPONDENT.
EXT.P12	TRUE COPY OF THE ORDER OF 3RD RESPONDENT DATED 29.8.1997.
EXT.P13	TRUE COPY OF THE ORDER DATED 29.8.1997 ISSUED BY THE 3RD RESPONDENT TO SMT. JIJI JOSEPH.
EXT.P14	TRUE COPY OF THE ORDER DATED 29.8.1997 ISSUED BY THE 3RD RESPONDENT TO SHRI. POULOSE P. THOMAS.
EXT.P15	TRUE COPY OF THE POSTING NOTICE DATED 29.12.1997.

// TRUE COPY //

KNC/- P.S. TO JUDGE.

P.R. RAMAN, J.

=== =======

O.P. NO. 1166 OF 1998

===============

DATED THIS, THE 22ND DAY OF NOVEMBER, 2007.

J U D G M E N T

Petitioner is a registered Partnership firm engaged in the business of plantation, having its Office at Kottayam, who is an assessee on the files of the Additional Agricultural Income Tax and Sales Tax Officer, Sulthan Bathery - the first respondent herein. The assessment pertains to 1987-88 to 1989-90. The assessment in respect of these years were completed as evidenced by Exts.P1 to P3 orders of assessment produced in this original petition. Aggrieved thereby, petitioner preferred an appeal before the Appellate Assistant Commissioner, who, by Ext.P4 common order, set aside the order of assessment and allowed various claims of the petitioner. Before the first appellate authority, various grounds were raised year-wise and detailed consideration was made by that authority and substantial reliefs were granted. In order to give effect to the appellate order and to pass modified orders of assessment, the matter was remanded. The State challenged Ext.P4 order before the Tribunal. However, the Tribunal dismissed the appeal and confirmed the order Ext.P4 as per its order Ext.P5.

Thereafter, the assessing officer gave effect to the appellate order Ext.P4 and passed modified orders of assessment as per Ext.P6. The Deputy Commissioner, Agricultural Income tax and Sales Tax, Kozhikode, who is the second respondent herein, suo motu revised Ext.P6 order by Ext.P11 which was confirmed by the Board of Revenue as per its order Ext.P12. Aggrieved thereby, petitioner has come up with this original petition.

2. Before the revisional order was passed, notice of proposal as mandated by the provisions of law was issued as evidenced by Ext.P10. The first and foremost contention of the learned counsel for the petitioner is that Ext.P11 order has gone beyond the proposal made in Ext.P10. He took me in detail to the proposal contained in Ext.P10 and Ext. P11 order in this regard.

3. It can be seen that one of the issue was regarding the share income of certain individuals to be clubbed and assessed with the share income of his/her husband/father, as the case may be. The second issue was as to whether there is any error in the matter of adopting the income for the year 1989-90 as against the conceded income of higher amount and the third issue was whether there is any change of the previous year relevant to the assessment year 1990-91 is correct.

4. The assessee objected to the proposal by filing a written objection. The main contention was that since the earlier order of assessment was subject matter of an appeal and a second appeal, there is a merger of the assessment with the order of the higher authority and as such, it is not open to invoke the power under Section 75 and revise such consequential orders by suo motu revision. It is true that power of suo motu revision under Section 75 could not be invoked on the very same ground which was subject matter of any appeal or revision before the higher authorities. But as rightly held by the Authority, nothing is produced to show that the same ground on which the suo motu power is exercised is dealt with in any appellate or revisional order as the case may be. If so the bar under Section 75 will not apply. However, paragraphs C and D of Ext.P11 order refers to the assessment year 1987-88 and 1988-89. The specific contention raised in the original petition is that no proposal as such was made in Ext.P10 regarding these assessment years. In the counter affidavit filed no reference is made to this contention raised in the original petition. The fact remains that for the assessment years 1987-88 and 1988-89 there was no proposal for re-opening of the case invoking the power under Section 75 of the Act. If so, the order Ext.P11 to the extent it has even directed the assessing authority to re-open the case relating to the assessment year 1987-88 and 1988-89 is

totally without jurisdiction. Accordingly, the order Ext.P11 and the directions contained in paragraphs C and D to the extent it relates to the assessment years 1987-88 and 1988-89 are quashed.

5. It was then contended that "clubbing of the income" is an aspect which the appellate authority had earlier dealt with to attract the bar under Section 75. In this regard, it was contended that there was an observation that the mode of computation in the case of individual assessee is found to be correct. Learned counsel wants to draw an inference therefrom that the mode of computation including clubbing of income therefore is thus a matter dealt with in the appellate order. Learned Government Pleader contends that no such inference could be drawn in this case. On the other hand, the specific point raised by the assessee has been dealt with in Ext.P4 appellate order and in no way the question regarding clubbing of income was specifically dealt with. If so, there is no warrant for making any inference as contended by the learned counsel appearing on behalf of the petitioner. On a perusal of Ext.P4 it cannot be said that the issue regarding clubbing of income of the individual partners regarding their share from the firm with that of the husband or father, as the case may be, was ever considered. Hence the order Ext.P11 could not be held to be without jurisdiction as respect this issue.

6. It is then contended that merely because the process of passing consequential order of assessment to give effect to the appellate order by which the income assessed was less than the income conceded is no reason for suo motu revision. But this is not a point urged by the petitioner before any of the authorities below.

In the result, the original petition is allowed in part. Ext.P11 to the extent it directs the assessing officer to re-open the assessment relating to the year 1988-89 as dealt with in paragraph C and D are quashed.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
== === == ==

O.P. 1166/1998
=== === ==

<u>J U D G M E N T</u>

22ND NOVEMBER, 2007.