

(1990) 01 KL CK 0020
In the High Court Of Kerala
Case No : Writ Appeal No. 58 of 1990

Joseph Chandy

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 23-01-1990

Acts Referred:

Income Tax Act, 1961 — Section 144, 146, 263

Citation : (1990) 183 ITR 213

Hon'ble Judges : K.S. Paripoornan, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : S.A. Nagendran and K.B. Subhagamani, for the Appellant; P.K. Ravindranatha Menon and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—The petitioner in Original Petition No. 20 of 1988 is the appellant in this writ appeal. In the original petition, the prayer was to quash exhibits P-3 and P-6 orders, passed by respondents Nos. 1 and 2. The petitioner is a partner of a firm, Messrs. Eastern Spices Trading Company. The managing partner was one R. Murukesan. The firm was doing business in spices. We are concerned with the assessment year 1979-80. The firm returned a total income of Rs. 35,830 under the head "Business". The Income Tax Officer eventually passed an order of assessment for the year 1979-80, evidenced by exhibit P-2, u/s 144 of the Act. It is dated February 19, 1982. The assessment happened to be passed u/s 144 of the Act, since the managing partner as well as the petitioner herein did not co-operate in effecting the assessment. What is more, the Income Tax Officer was faced with the hurdle that even a notice could not be served either on the managing partner or on the petitioner. It is so evident from a perusal of the files that the managing partner and the petitioner were evading service of notices at all stages. After perusing the relevant records, the Commissioner of Income Tax found that the partners of the firm were, literally playing hide and seek with the Department. It was patent that the managing partner, Sri. R. Murukesan, was evading service of notice. When the notice of demand was served on the assessee, an application for reopening the

assessment was filed u/s 146 of the Act. It was rejected by exhibit P-3 order dated August 19, 1982. A perusal of exhibit P-3 will show that the firm and its partners were evading service of notice and avoiding finalisation of the issues as far as practicable. So, the Income Tax Officer concluded that no useful purpose will be served by reopening the assessment u/s 146 of the Act. He held that the petition was one filed without bona fides. This order is dated August 19, 1982. A revision was filed from the said order on September 10, 1986, evidenced by exhibit P-4, by the petitioner. It was rejected by exhibit P-6 order dated October 8, 1987. Admittedly, there was a delay of over three years in filing the revision. The Commissioner of Income Tax held that no adequate ground existed for condoning the delay in filing the revision. Exhibits P-3 and P-6 were assailed in the original petition. The learned single judge held that the order passed by the Commissioner cannot be found fault with, and declined jurisdiction. The original petition was dismissed. The petitioner in the original petition has come up in writ appeal.

2. We heard counsel for the appellant. On a perusal of exhibits P-3 and P-6, it is evident that the firm and its partners were successfully evading service of notice and, as stated by the Commissioner, they were playing hide and seek so as to delay the effecting of the assessment. The Income Tax Officer was justified in declining to reopen the assessment as per exhibit P-3 order. The Commissioner found that no adequate reason or ground existed to condone the delay caused in filing the revision. Whether there is sufficient cause to condone the delay in filing the revision is a question of fact. No material was adduced either before the learned single judge or before us to show that the said finding, entered by the Commissioner of Income Tax, is in any way perverse or illegal. In this view, exhibit P-6 order passed by the Commissioner of Income Tax is also reasonable and valid. The learned single judge was justified in declining jurisdiction.

3. We see no merit in this writ appeal. It is dismissed.