

(1990) 02 KL CK 0047
In the High Court Of Kerala
Case No : Writ Appeal No. 48 of 1990

Mani and Co.

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 12-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 256

Citation : (1990) 185 ITR 241

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

Bench : Division Bench

Advocate : M.C. Sen, for the Appellant; P.K. Ravindranatha Menon and N.R.K. Nair, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The petitioner in O. P. No. 8307 of 1989 is the appellant in this writ appeal. The respondent is the Revenue. The matter arises under the Income Tax Act. By exhibits P-1 to P-3, the petitioner-firm was assessed for the years 1979-80 and 1980-81. The appeals were disposed by the Commissioner of Income Tax (Appeals) by exhibits P-4 and P-5. The Revenue, as well as the assessee (appellant) filed appeals before the Income Tax Appellate Tribunal. These were disposed of by the Appellate Tribunal by exhibit P-6 order. The Appellate Tribunal referred to the orders passed by the Settlement Commission for the prior assessment years and estimated the income at the average rate of 10%. The assessee's appeal was dismissed and the appeal filed by the Revenue was allowed. In the original petition, the attack was against exhibits P-1 to P-3 assessment orders, as affirmed by exhibit P-6 order passed by the Appellate Tribunal. Holding that the assessee has an equally efficacious alternate remedy u/s 256 of the Income Tax Act and that it has been availed of by the assessee, the learned single judge declined jurisdiction. The petitioner in the original petition has come up in writ appeal.

2. We heard counsel for the appellant, Mr. M.C. Sen. It was argued that exhibits P-1 to P-3 orders, as well as the order rendered in exhibit P-6 are without jurisdiction. It was stated that exhibit P-6 is arbitrary. However that may be, it cannot be denied that the petitioner can ventilate his grievances against exhibit P-6 order by filing a reference application u/s 256(1) of the Income Tax Act, The petitioner has done so. It is for the petitioner to pursue that remedy. It is not open to the petitioner to invoke the jurisdiction under Article 226 of the Constitution of India simultaneously, since the remedy under Article 226 of the Constitution is not a concurrent one. It was so held by this court in McDowell and Co. v. Asst. CST [1985] KLT 428 : [1986] 62 STC 164 SC. In the light of the above, we decline to interfere in this writ appeal.

3. The writ appeal is dismissed.