(1989) 10 KL CK 0026

In the High Court Of Kerala

Case No : Original Petition No. 8307 of 1989-L

Mani and Co. APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 06-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 261(1)

Citation : (1990) 182 ITR 357

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : M.C. Sen, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Nayar, J.—The original petition is filed praying to quash exhibits P-1 to P-3 and P-6 orders of the Income Tax Officer as well as the appellate order of the Income Tax Appellate Tribunal. For the assessment years 1979-80 and 1980-81, the petitioner was assessed to Income Tax. Against the assessments, the petitioner filed appeals before the Commissioner of Income Tax (Appeals) and the same were disposed of by exhibit P-4 and exhibit P-5. Both the assessee and the Revenue filed second appeals before the Tribunal. For the two years under consideration, the assessee had shown losses on receipts and the Income Tax Officer rejected the book results and applied an average rate of 10% and estimated the income. The Commissioner of Income Tax (Appeals) accepted the assessee''s contention in part and it is thereafter that both the assessee and the Department filed appeals before the Tribunal. The Tribunal has disposed of all the appeals by exhibit P-6. The Tribunal found that for the preceding assessment years also, the assessee had been showing 1 per cent and 2 per cent profits and the matter was settled with the Settlement Commissioner at about 10 per cent profit. Therefore, the Tribunal found no reason to consider a different yardstick from the appellate order for the two years in question. Accordingly, the Tribunal dismissed the assessee''s appeal and allowed the Department''s appeal. Against the order of the Tribunal, the petitioner has a statutory remedy by way of application for reference u/s 256(1) of the Income Tax Act, 1961, and it is submitted that the assessee has availed of that remedy and filed petitions before the Tribunal. But, in the meantime, this original petition is filed to quash the same orders on the ground that the statutory remedy available is one involving delay. That is not a ground for exercising jurisdiction under Articles 226 and 227. If a statutory remedy is available to the assessee, he has to avail of that remedy. The petitioner approached this court challenging the same orders against which a statutory remedy is available.

2. Therefore, there is no merit in the petition. I make it clear that this will not preclude the petitioner from availing of the statutory remedy.

3. The original petition is dismissed.