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(1994) 06 KL CK 0013

In the High Court Of Kerala

Case No : Original Petition No. 8680 of 1994-G

Rosamma Thomas APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 28-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 139(8), 273A

Citation : (1994) 210 ITR 814

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : G. Sivarajan and S. Vinod Kumar, for the Appellant; P.K. Ravindranatha Menon, Senior Advocate and N.R.K. Nair, for the Respondent

Judgement

P.A. Mohammed, J.—Exhibit P-4 order passed by the Commissioner of Income Tax is challenged in this writ petition. The petitioner is an assessee under the Income Tax Act, 1961, and she filed a revision petition before the Commissioner. At the time of hearing of the revision petition, the petitioner was represented by her representative, Mr. R. Sureshkumar, C. A. What was pleaded before the Commissioner is for waiver of interest charged under Sections 139(8) and 215, The assessment year in question is 1987-88. Under the provisions contained in Section 273A discretion has been conferred on the Commissioner to waive interest. The question is whether the Commissioner has properly exercised his power in disposing of the revision petition. After perusing the records, the Commissioner has observed : "the assessee had not voluntarily filed the return of income and the disclosure made in the original return of income was also not complete." Therefore, it is difficult to say that there is no application of mind by the Commissioner while disposing of the revision petition. When an authority has refused to exercise its discretion on certain reasons, this court in the present proceeding under Article 226 of the Constitution, cannot substitute its own reasons for such exercise. It is the discretion of the authority who passed the order and not the discretion of this court. Therefore, I do not find any reason to

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entertain this writ petition. It is dismissed.

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