(2006) 02 KL CK 0002

In the High Court Of Kerala

Case No : O.P. No. 5843 of 2000

Thayyil Enterprises APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Income Tax Act, 1961 — Section 186, 186(1)
Partnership Act, 1932 — Section 4

Citation : (2006) 206 CTR 654 : (2006) 3 ILR (Ker) 127 : (2006) 287 ITR 414 : (2006) 4 KarLJ 40

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : C. Kochunny Nair and S. Vinodkumar, for the Appellant; P.K. Raveendranatha Menon and George K. George, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The petitioner is challenging Ext P-5 order wherein the Commissioner of Income Tax has confirmed the order of the Assessing Officer under the Income Tax Act cancelling renewal of registration of the firm granted to the petitioner u/s 186 of the Income Tax Act for the assessment years 1990-91, 1991-92 and 1992-93. The petitioner is a partnership constituted for construction of a building which is let out on rent. The firm was granted registration under the Income Tax Act for the assessment year 1989-90 and the registration was allowed to continue for the subsequent three, assessments years 1990-91 to 1992-93. However, after granting renewal, the officer later noticed that there is no genuine firm in existence as the firm is not engaged in any business and therefore, he cancelled the renewal of registration granted for the three assessment years which is confirmed by the Commissioner in revision. It is this order which is under challenge in this O.P.

2. I heard counsel for the petitioner and Standing Counsel for the Income Tax Department. The main question raised by the petitioner is that once registration

is renewed, the same cannot be withdrawn u/s 186 of the Income Tax Act which provides for cancellation of registration only if the firm as registered is not found to be genuine. Standing Counsel however relied on Division Bench decision of this Court in Madras Pack Marine Co. Vs. Commissioner of Income Tax, , whereunder this Court has held that if a firm is not entitled to registration either on account of the fact that it has no legal existence or is not genuine or is bogus, then the grant of renewal of licence is wrong and for the very same reason registration renewed can be cancelled u/s 186(1) of the Income Tax Act, 1961. On going through Ext. P-5 order of the Commissioner, I find for all the relevant years the petitioner-company did not concede any income from business and the petitioner had specifically returned the rental income from building let out by it as income from house property. In order to constitute a genuine firm, the firm should be engaged in business because Section 4 of the Partnership Act specifically defines a firm as a relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, existence of a business is a "sine qua non" for a partnership. Since admittedly petitioner was not carrying on business and in the returns filed petitioner does not claim it''s rental income as business income, it is a conceded fact that petitioner is engaged in no business. Even though counsel for the petitioner contended that construction of a building by two brothers and their family members for the purpose of letting out and the actual letting out of the same is business, the petitioner itself has not made any such claim by returning the income as business income in the returns filed. On the other hand, petitioner itself conceded income from house property under the specific head of "income" provided for that under the Income Tax Act for the assessment of rental income. The argument is therefore prima facie unacceptable. It is also seen that the Commissioner has rejected the claim following consistent decisions of several High Courts including that of this Court in Commissioner of Income Tax Vs. Jacobs, and in Mrs. Grance S. George (on behalf of BMG Enterprises) Vs. Commissioner of Income Tax, . In the circumstances, I find no ground to interfere with Ext. P-5 and O.P. is therefore dismissed as one devoid of any merit.