Essar Agencies and ors. Vs. Assistant Commissioner of Income-tax and anr.

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Court : Kerala

Decided On : Jun-01-2000

Reported in : [2000]245ITR257(Ker)

Judge : J.B. Koshy, J.

Acts : Constitution of India - Articles 226 and 227

Appeal No. : O.P. Nos. 8345 and 8373 of 1999

Appellant : Essar Agencies and ors.

Respondent : Assistant Commissioner of Income-tax and anr.

Advocate for Def. : P.K.R. Menon and; George K. George, Advs.

Advocate for Pet/Ap. : P.B. Sahasranamam and; K. Jagadeesh, Advs.

Judgement :

J.B. Koshy, J.

1. In both these original petitions, assessments were made on the petitioners and in appeal the assessments were set aside. Penalty orders were also issued which were also set aside. However, prosecution proceeding's were taken and writ petitions were filed.

2. Learned standing counsel for the Income-tax Department admits that the assessments and penalty orders for the assessment years 1988-89 and 1989-90 have been set aside and as such at present the prosecution will not lie. It is submitted that since fresh assessments can be done as the appellate authority has only remanded the matter, criminal proceedings can be kept pending. It is contended that the petitioners have to approach the magistrate's court for that relief instead of filing a writ petition. This court is of the opinion that having admitted that prosecution will not lie at present, in view of the fact that the assessments and penalty orders were set aside, the Department should have withdrawn the prosecution instead of compelling the petitioners to approach this court. Technicalities will not stand as an obstacle to do justice. This court which has an extraordinary jurisdiction under Articles 226 and 227 need not send the petitioners to the magistrate's court for quashing a complaint which is admittedly not maintainable. Rules of procedure are only hand maids of justice. Further, in view of the decision of the Supreme Court reported in Pepsi Foods Ltd. v. Special Judicial Magistrate [1998] AIR 1998 SC 128 ; [1998] 5 SCC 749 , what can be done under the Criminal Procedure Code can be done under this jurisdiction also. Having admitted that penalty orders and assessments issued against the petitioners were set aside and therefore prosecution will not lie, I set aside the prosecution proceedings based on the complaint (exhibit P-10) questioned in this case.

3. Therefore, without prejudice to the right of the Department in making assessments as directed by the appellate authority and prosecution, if necessary, according to law, both the original petitions are allowed.