

Mohammed Abdul Kader Vs. Ito

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Court : Kerala

Decided On : Mar-19-2003

Reported in : [2004]134TAXMAN781(Ker)

Appeal No. : Writ Appeal No. 456 of 2003 19 March 2003

Appellant : Mohammed Abdul Kader

Respondent : ito

Advocate for Pet/Ap. : C. Kochunny Nair and Dale P. Kurian, *for the Assessee*
P.K. Ravindranatha Menon and George K. George, *for the Revenue*

Judgement :

Jawahar Lal Gupta, C.J.

The appellant is an income-tax assessee. He filed a petition under article 226 of the Constitution of India with the prayer that the orders, copies of which have been placed on record as Exts. P1 to P3 by which additional demand was raised by the assessing authority be quashed. The petition was considered by the learned Single Judge. Keeping in view the fact that the appellant has filed separate appeals against the three orders, it was directed that the said appeals shall be disposed of by the Appellate Authority within a period of four months. It was further directed that the recovery proceedings shall remain stayed subject to the assessee depositing 30 per cent of the arrears demanded by the authority.

2. The appellant has not made the deposit. He has, however, filed the present appeal.

3. We have heard Mr. Dale P. Kurian, learned counsel for the appellant. He contends that in respect of an earlier year of assessment, this court had granted an interim stay, a copy of which has been produced as Ext. P10. Thus, the stay should have been granted even in the present case.

4. We are unable to accept the contention as raised by the learned counsel. The facts of the case which led to the passing of the order dated 31-12-2002 in O.P. No. 39779/2002 are not before us. However, so far as the present case is concerned, we find that the assessing authority has given reasons for the additional demand which has been raised. In the circumstances, the learned Single Judge has exercised his discretion. There is no error of fact or law which may persuade us to take a different view. The mere fact that an interim relief had been granted in one case does not mean that irrespective of the factual position, the relief has to be granted in other cases as well. The additional demand appears to have been raised on the basis of certain deposit which the assessee was unable to explain. Thus, it cannot be said that the discretion has not been properly exercised.

5. Without expressing any opinion on the merits of the orders of assessment, we find no infirmity in the view taken by the learned Single Judge so as to call for any interference in this appeal.

6. No other point has been raised.

In view of the above, the appeal is dismissed.