

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

THURSDAY, THE 31ST JANUARY 2008 / 11TH MAGHA 1929

ITA.No. 229 of 2002()

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AGAINST THE ORDER DATED 25/02/2002 IN COCH IN
ITA.855/1995 of I.T.A.TRIBUNAL,COCHIN BENCH
.....**

APPELLANT/APPELLANT:-

**THE COMMISSIONER OF INCOME TAX,
COCHIN.**

**BY ADV. SRI.P.K.R.MENON(SR.),SR.COUNSEL FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT**

RESPONDENT: RESPONDENT:-

**SHRI VIRESH KALYANJI,
VIRESH & CO., KRISHNA BHAWAN, LALAN ROAD,
KOCHI-2.**

BY

**THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 31/01/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

**C.N. Ramachandran Nair &
T.R. Ramachandran Nair, JJ.**

I.T.A.NO.229 of 2002

Dated this the 31st day of January, 2008.

JUDGMENT

C.N. Ramachandran Nair, J.

This is a department appeal filed against concurrent orders of two appellate authorities, in favour of the assessee. Notice could not be served on the assessee, as the assessee is not traceable. It is seen from the order of the Tribunal that the Tribunal made all efforts to trace the assessee through its own net work and through the department. Neither the department nor the Tribunal could trace the assessee and the matter was decided ex-parte, though in favour of the assessee, after 12 postings. The Tribunal has recorded that even the department was not successful in tracing the assessee. If the assessee is not traceable, obviously tax, if any, payable consequent upon the department getting favourable orders from this court, cannot be recovered. The appeal therefore serves only academic purpose for the department. We, therefore, do not think that we should waste our time on this appeal which is pending before this court for the last five years.

We, therefore, dismiss the appeal leaving freedom to the department

to move this court through review or otherwise, after tracing the assessee.

(C.N. Ramachandran Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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C.N. Ramachandran Nair & &
T.R. Ramachandran Nair, JJ.

I.T.A. No.229 of 2002

JUDGMENT

31st January, 2008.