

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR  
&  
THE HONOURABLE MR. JUSTICE B.P.RAY

MONDAY, THE 28TH FEBRUARY 2011 / 9TH PHALGUNA 1932

WA.No. 247 of 2011()

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AGAINST THE JUDGEMENT/ORDER IN WPC.37892/2010 Dated 18/01/2011

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APPELLANT(S): / PETITIONER

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RAJAN MATHAI, S/O.LATE A.P.MATHAI,  
ALACKAL HOUSE, THRIKKALTHUR, MULVOOR VILLAGE,  
NOW RESIDING AT HOUSE NO.107, ONNAM MILE,  
PERUMBAVOOR.

BY ADV. DR.GEORGE ABRAHAM  
SRI.RENNY AUGUSTINE

RESPONDENT(S): / RESPONDENTS

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1. STATE OF KERALA REPRESENTED  
BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM.
2. THE DEPUTY COMMISSIONER (APPEALS),  
COMMERCIAL TAXES, KANNUR CAMP AT ERNAKULAM.
3. THE COMMERCIAL TAX OFFICER,  
COMMERCIAL TAX, MUVATTUPUZHA.

MR.SHAMSUDEEN, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION  
ON 28/02/2011, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

C.N.RAMACHANDRAN NAIR & BHABANI PRASAD RAY, JJ.

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W.A No.247 of 2011  
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Dated, this the 28<sup>th</sup> day of February, 2011

J U D G M E N T

Ramachandran Nair, J.

This Writ Appeal is filed against the judgment of the learned Single Judge dismissing the Writ Petition for the reason that the appellate authority rightly held that reasons stated for condoning the delay are unacceptable. The appellant, on receiving the assessment order, filed an insolvency petition against recovery and when the petition was dismissed, filed an appeal against the assessment with a delay condonation petition to condone the delay of over six years. The appellate authority dismissed the same and the same is confirmed by the learned Single Judge. It is against this judgment, the appellant has filed this Writ Appeal.

2. We have heard learned counsel appearing for the appellant and learned Government Pleader appearing for the respondents.

3. If the appellant had sufficient grounds to successfully challenge the assessment order, we are sure that he would have filed an appeal instead of filing an insolvency petition, the filing of which presupposes that but for his financial condition he would have been liable to pay the tax. However the appellant's counsel

submitted the appellant did not get the correct advice. If the assessment is tenable, then certainly the scrutiny of the correctness of the same in an appeal by the appellate authority will not adversely affect the interest of the State.

However considering the undesirable route adopted by the appellant and the delay he caused in recovering the tax, we feel the appellant should be put to strict conditions for giving one more opportunity to file an appeal. We, therefore, grant facility to the appellant to file appeal after payment of Rs.50 lakhs, for which the appellant is given one month's time from today; and if payment is made and the receipt is produced along with appeal, the appellate authority will restore the appeal and decide the appeal on merits after hearing the appellant and the Assessing Officer, and after perusing the records. However, if payment is not made, appeal will stand dismissed as held by the appellate authority and the respondents are free to proceed with recovery of the tax and interest.

This Writ Appeal is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(BHABANI PRASAD RAY, JUDGE)