IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 30TH DAY OF JULY 2021 / 8TH SRAVANA, 1943

WA NO. 352 OF 2005

AGAINST THE JUDGMENT IN OP 7661/1999 OF HIGH COURT OF KERALA, ERNAKULAM

APPELLANTS/PETITIONERS:

1 DR.R.P.PATEL
HAHNEMAN HOUSE
COLLEGE ROAD, KOTTAYAM-686 001.

*2 MR.INDRAKUMAR R.PATEL,
S/O. LATE R.P.PATEL,
INDRA-PRAST BUNGLOW,OPP.ATHMAJYOTI ASHARAM,
NEAR PRABHUDWAR,ELLORA PARK,
SUBHANPURA,VADODHARA,
GUJARAT-390023.

*3 DR.JAWAHARLAL R.PATEL,
S/O.LATE DR.R.PATEL,
7TH PRABHUDWAR,ELLORA PARK, SUBHANPURA,VADODHARA,
GUJARAT-390023.

*4 MRS.JYOTIBEN,
D/O.LATE DR.R.P.PATEL,
DR.R.P.PATEL INSTITUTE OF HOMEOPATHIC,
ELLORA PARK,SUBHANPURA,VADODHARA,
GUJARAT-590023.

*(ADDITIONAL APPELLANTS 2 TO 4 ARE IMPLEADED AS PER ORDER DATED 08/03/21 IN I.A.NO.1/21 IN W.A. NO.352/2005.

BY ADVS.
SRI.JOHN RAMESH

SRI.RAMESH CHERIAN JOHN

RESPONDENTS/RESPONDENTS:

1 THE ASST.DIRECTOR OF INCOME TAX
(INVESTIGATIONS), KOTTAYAM.

2 ASST.COMMISSIONER OF INCOME TAX
INVESTIGATION CIRCLE,, KOTTAYAM.

3 COMMISSIONER OF INCOME TAX
TRIVANDRUM.

*4 DR.ARUNKUMAR R.PATEL,
S/O.LATE DR.R.P.PATEL,
1ST PRABHUDWAR,ELLORA PARK,
SUBHANPURA,VADODHARA,GUJURAT-390023.

*(ADDITIONAL R4 IS IMPLEADED AS PER ORDER
DTD.08/03/21 IN I.A. NO.1/21 IN W.A. NO.352/2005.

BY ADVS.
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 9.7.2021, THE COURT ON 30.07.2021 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of July, 2021

Bechu Kurian Thomas, J.

By Ext.P5, the original appellant was denied the benefit under the Kar Vivad Samadhan Scheme, 1998, ('KVS Scheme' for brevity), wholly for the assessment years 1994-95, 1995-96, and partially for the years 1992-93 and 1993-94. The reason for denying the benefit was stated as the non-existence of tax liability for the said years on the date of application under the scheme. Appellant however claimed in the writ petition that, tax arrears existed on the date of application and the encashments of the seized Indira Vikas Patras of the appellant were without authority and illegally adjusted against the tax liabilities of the appellant. Thus, the application of the appellant was rejected stating that there were no existing tax arrears. The learned Single Judge held that the encashment was valid and disposed of the writ petition with directions most of which were contrary to the appellant's claim. Hence this appeal

2. The original appellant was a homoeopathic practitioner at Kottayam. The income tax department conducted a search at the residence and clinic of the Homeopath (for short 'the assessee') on

30.12.1994. Simultaneously, the Department conducted searches at the residence of his two sons at Baroda in Gujarat State. Various documents, cash and several Indira Vikas Patras ('IVP's' for brevity) were recovered during the search. After the seizure of those assets, the assessee disclosed an amount of Rs,1,46,78,980/- for the assessment years 1990-91 to 1995-96 under section 132(4) of the Income Tax Act,1961 ('the Act' for brevity). An order under section 132(5) of the Act was issued by the 2nd respondent on 28.4.1995, estimating the total income, the tax thereon, interest and penalty. The said order was issued for retaining the seized assets for appropriation after determination of tax liability of the assessee. The IVP's 'retained' were encashed through the postmaster and on different dates the realized amount was adjusted towards income tax allegedly due from the assessee for the period 1994-95 and 1995-96. When the KVS Scheme was introduced in 1998, the assessee could not claim the full benefit of the KVS Scheme, since by then, the tax arrears for the assessment years 1994-95 and 1995-96, were adjusted from the amounts obtained by encashing the IVP's. This adjustment disentitled the assessee to the benefit of the KVS Scheme. Ext.P5 certificate issued by the Commissioner of Income

Tax under KVS Scheme denying the benefit of the scheme for the years mentioned above resulted in the writ petition.

3. The learned Single Judge, after considering the merits of the matter, disposed of the writ petition. It was held that the encashment of IVP's was valid and that the recovery and adjustments of tax and advance tax for the year 1995-96 were also proper. However, the recovery of tax and interest by adjustment from the encashed value of the IVP's for all the other years effected prior to the due dates for such payments were held to be bad in law, and the same was directed to be reconsidered. Aggrieved by the said judgment, the assessee is in appeal before us. During the pendency of the appeal, the original appellant died, and his legal heirs were impleaded as additional appellants.

4. To consider the issues raised at the Bar, it may be necessary to delve briefly into the pleadings in the case.

(a) After the search carried out between 30.12.1994 and 07.01.1995 and the consequent seizure by the 1st respondent, an order was passed by the assessing officer-2nd respondent on 28.4.1995 under section 132(5) of the Act. In the said order, towards the concluding portion it was mentioned that *"Out of the total assets*

seized, cash of Rs.6 lakhs and maturity value of I.V.P. encashed, Rs.4 lakhs were adjusted against the advance tax demand for the assessment year 1995-96. Balance assets seized are retained since the demand payable as per this order exceeds the total value of balance assets seized."

(b) On 29.3.1995, by Ext.P2, the 1st respondent requested the Post Master, Head Post Office, to encash IVP's amounting to Rs.4,00,000/-. Similarly, between 30.3.1995 and 30.10.1997, IVP's worth Rs.61,72,000/- were encashed by the 1st respondent.

(c) According to the appellant/petitioner, instead of retaining or handing over the encashed IVP's, the same were all illegally adjusted against alleged advance tax for 1995-96 as well as for the tax and interest allegedly due for the earlier years.

(d) The writ petition was filed alleging that the encashments of IVP's and consequent adjustments were all done without authority or jurisdiction and contrary to section 132(9A) of the Act. Apart from the lack of jurisdiction and authority, assessee pleaded that the mandatory notice under section 226(3) of the Act had never been given to the assessee before proceeding for recovery. Claiming that the adjustments were without authority or jurisdiction and in violation of the principles of natural justice, the appellant sought to quash the

encashments of the IVP's. Ext.P5 was also challenged on the ground that had the illegal adjustments not been made, tax arrears would have been in existence as on the date of application and assessee would have got the benefit of the KVS Scheme.

5. Counter affidavits and additional counter-affidavits were filed separately by respondents 1, 2, and 3. The 1st respondent repeatedly stated that he had handed over the seized books of account, other documents and assets to the assessing officer on 10.1.1995. Respondents 1 and 2 stated that they had carried out the encashments and that merely because the 1st respondent had sent a letter to the postmaster, there was no assumption that the 1st respondent had initiated the refund. The counter-affidavits further stated that the 1st respondent never exercised any jurisdiction to withdraw the IVP's or adjust the amounts so encashed. It was further asserted that the appropriation of the proceeds of the IVP's were carried out at the request of the assessee, and since the said adjustments were at the behest of the assessee, the action of the respondents cannot be faulted. The 3rd respondent, while reiterating the contentions of other respondents, pointed out that the department had acted as per the instructions given by the assessee in Ext.R3(a)

letter. It was further pleaded that in view of Ext.R3(a) the assessee could not turn around and question the action carried out as per his request.

6. The assessee filed reply affidavits. It was stated that the 1st respondent encashed the IVP's even before the quantification of tax. It was pleaded that the quantification for the years 1990-91 to 1994-95 was carried out only on 23.12.1997, while for the year 1995-96 the quantification was made on 25.11.1997. Appellant pleaded that the adjustments were made in gross violation of the mandatory provisions. The contents of the separate reply affidavits are not reproduced since most of them contain reiterations or rebuttals of the counter affidavits.

7. The learned Single Judge in the judgment under appeal held that it was the 2nd respondent who carried out the encashments of IVP's while the 1st respondent had only co-ordinated the encashing by acting on behalf of the 2nd respondent. It was further found that, though under section 132(B)(i) of the Act, appropriation of seized assets can be carried out only after the determination of liability, since the assessee had by Ext.R3(a) requested for adjustment, the action of the assessing officer was valid. Except for adjustment of

the encashed value of IVP's for the years prior to the expiry of due dates for payment, all other issues were found against the assessee. It is in such circumstances that the assessee has preferred this appeal.

8. We heard Adv. Ramesh Cherian John learned counsel for the appellants and Adv. Jose Joseph learned Senior Standing Counsel for the Income Tax Department.

9. For easier assimilation, we formulate the following questions for our consideration.

(i) *Whether the encashments of seized IVP's were carried out by the 1st respondent or the 2nd respondent?*

(ii) *Whether the encashments of the seized IVP's were in accordance with law?*

(iii) *Whether the encashed amounts under the IVP's were liable to be adjusted. If so, for which assessment years?*

(iv) *What reliefs are the assessee entitled to?*

10. The above questions are considered in detail as below.

Q.(i) *Whether the encashments of seized IVP's were carried out by the 1st respondent or the 2nd respondent?*

11. The main argument raised by Adv. Ramesh Cherian John is that the IVP's were encashed by the 1st respondent who had no

authority to do so as per the provisions of the Act. In the impugned judgment, the learned Single Judge found that the encashments of IVP's were carried out by the 2nd respondent-assessing officer, while the 1st respondent had only co-ordinated the collection and encashment of IVP's. This finding is seriously attacked by the learned counsel for the appellant while Adv.Jose Joseph submitted that the finding needs no interference.

12. Ext.P2 series are the documents by which the IVP's were encashed, while Ext.P3 series are the documents intimating the encashments of other IVP's to the assessee. For a better appreciation , the first page of Ext.P2 is extracted below:-

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NO.ADI/INV/KTN/S&S/BNC-49A/94-95.

OFFICE OF THE
Assistant Director of Income-tax
(Investigation),Mangad Buildings
Kottayam, dated 29th March, 1995

The Post Master,
Head Post Office,
Kottayam,

Sub:- Encashment of Indira Vlkas Patras- request for

Sir,

Please refer to the above.

2. I tender herewith the following Indira Vikas Patras with a request to encash the same, and pay the proceeds being the maturity thereof amounting to Rs.4,00,000 (Rupees four lakhs only) to the undersigned:-

Sr. No.	Distinctive numbers of IVPS.		Maturity Date.	Amount.
1	10C 561030 - 561039	10	12-1-1995	Rs.50,000

2	10C	561094	-	561113	20	17-1-1995	Rs.1,00,000
3	10C	561317	-	561326	10	30-1-1995	Rs.50,000
4	10C	561374	-	561383	10	2-2-1995	Rs.50,000
5	10C	561813	-	561822	10	17-2-1995	Rs.50,000
6	10C	562082	-	562091	10	5-3-1995	Rs.50,000
7	10C	562375	-	562384	10	27-3-1995	Rs.50,000
						Total	4,00,000/-

Yours faithfully,

(N.M.Chacko)
Assistant Director of Income Tax
(Investigation), Kottayam

CC to:
Dr.R.P.Patel
Hannemann House, College Rd.,
Kottayam.

Copy submitted to
The C.I.T., Thiruvananthapuram, with ref.to her C.No. Misc./71/T/94-SS: dtd 23-3-1995.
The D.D.I. (Inv.), Aayakar Bhavan, Tiruvananthapuram.
The A.C., Inv.circle, Kottayam.
The D.C., Kottayam Rance, Kottayam.

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13. The other exhibits produced as Ext.P2 series are identically worded as Ext.P2 except for the figures, while Ext.P3 series are letters addressed to the assessee and issued by the 1st respondent informing him of the encashment of the IVP's mentioned therein. The wordings in Ext.P2 series and those in Ext.P3 clearly show that the IVP's were tendered to the Post Master by the 1st respondent. The request for encashment originated from the 1st respondent, and the encashed amounts (proceeds) were directed to be paid to the 1st respondent (referred to as undersigned in Ext.P2

series). The words "*I tender herewith*" and "*to the undersigned*" in Ext.P2 are crucial while deciding the question raised. The first sentence of all the letters in Ext.P2 series is explicit that the IVP's were tendered for encashment by the 1st respondent. A glance at Ext.P2 and Ext.P3 will reveal that the IVP's were encashed by the 1st respondent and not by the 2nd respondent. By issuing Ext.P2 series letters and tendering the IVP's along with those letters and directing the proceeds to be paid to the 1st respondent, it cannot be assumed that 1st respondent was only co-ordinating the encashment. As a matter of fact, only copies of letters requesting the postmaster to encash the IVP's were sent to the 2nd respondent. It is evident from Ext.P2 series that 2nd respondent had no role at all in the encashment of IVP's.

14. The contention that the 1st respondent sent the letters encashing the IVP's on behalf of the 2nd respondent, is on the face of the record, wholly untenable. Respondents 1 and 2 are independent statutory authorities. They perform functions that are distinct and separate. They can never be regarded as an agent of one another or as acting on behalf of another. Accordingly, the finding of the learned Single Judge that the encashments of IVP's were carried out by the

2nd respondent-assessing officer, while the 1st respondent had only co-ordinated in the collection and encashment of IVP's, is set aside. We, therefore, hold that the encashments of IVP's as per Ext.P2 series and Ext.P3 series were carried out by the 1st respondent.

Q.(ii). *Whether the encashment of the IVP's were in accordance with law*?

15. The IVP's were seized by the 1st respondent during searches conducted in accordance with the provisions of the Act. Section 132 of the Act deals with 'search and seizures'. A special and separate procedure is laid down under section 132 of the Act to search and seize documents or assets. As per section 132 of the Act, if the officers specified therein has reason to believe that there is undisclosed income or property, they can authorise the officers mentioned in S.132(1A), (hereafter referred to as 'authorised officer') to enter, search and even seize any books of account, or other documents, money, bullion, jewellery or other valuable articles found in such search. If the authorised officer is not the assessing officer of the assessee, then the procedure under S.132(9A) must be resorted to. It is fruitful to extract S.132(9A) of the Act as it then existed at this juncture.

> *"S.132(9A)-Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents or assets seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer."*

16. As per the above extracted provision, the authorised officer shall hand over all the seized assets, including documents, to the assessing officer within 15 days of seizure, and thereafter, the powers under sub-clause (8) and (9) of section 132 can be exercised only by such assessing officer. Thus after 15 days of seizure, the authorised officer cannot retain any of the seized documents or assets. Once the assessing officer comes into possession of the seized articles or documents, he is then obliged to pass an order under section 132(5) within 120 days of the seizure regarding five aspects. The five features to be dealt with in an order under section 132(5) are (a) to estimate the undisclosed income in a summary manner, (b) to calculate the amount of tax on the income, so estimated, (c) to determine the amount of interest payable and the penalty to be imposed, (d) to specify the amount required to satisfy any existing liability, and (e) to retain in his custody such assets as

are in his opinion sufficient to satisfy the amounts determined as tax, interest, penalty and the defaulted amount till that date.

17. Section 132 of the Act is a code by itself. The various steps are provided with a salutary purpose. It has an inbuilt mechanism to prevent arbitrary actions. Sections 132 to S.132B embody an integrated scheme laying down the procedure comprehensively for search and seizure and the power of the authorities making the search and seizure to order the confiscation of the assets seized. Reference to the decisions in **Pooran Mal v. Director of Inspection (Investigation)** [(1974) 1 SCC 345], and **P.R.Metrani v. Commissioner of Income Tax, Bangalore** [(2007) 1 SCC 789] are advantageous in this context.

18. The inevitable conclusion on comprehending the scheme of S.132 is that the authorised officer who conducted the search and seizure becomes functus officio, as far as the seized articles or documents are concerned, after the fifteenth day from seizure. Beyond the fifteenth day, the authorized officer cannot possess any of the documents or assets seized during the search. It is an inbuilt mechanism under the provision. It is the statutory mandate on the authorized officer to hand over all the seized documents and assets

to the assessing officer. However, if the authorized officer and the assessing officer are the same, he can continue to retain the documents or assets and then act as the assessing officer.

19. In the decision in **K.V. Krishnaswamy Naidu & Co. v. Commissioner of Income Tax and Others** [(1987) 166 ITR 244 (Mad.)], the Madras High Court had occasion to consider whether the authorised officer who conducted the search and seizure could apply for an extension of the period of retention of the assets or documents beyond the period of 15 days, as contemplated under section 132(8) of the Act. While answering the aforesaid question in the negative, the court observed as follows:

> *"5. ……...The Income-tax Officer could not exercise his powers under sub-section (5) unless he is in legal possession of the assets or other documents seized during the search made. Even if the authorised officer is an income tax officer, if he had no jurisdiction over the persons referred to in clause (a), (b) or (c) of sub-section (1), he could not exercise his power under sub-section (5). He shall have to hand over the seized documents or assets to the Income-tax Officer having jurisdiction over the person to make an order under sub-section (5). As seen from sub-section (5), there is a time limit of 120 days from the date of seizure for making an order. It is in order to enable the Income-tax Officer who has jurisdiction over the person to make an order under sub-section (5) within the period prescribed in cases where the authorised officer was directed to hand over the documents or assets seized to that Income-tax Officer within a period of 15 days from the date of seizure. In the circumstances, therefore, there could be no doubt that when sub-s.(9A) refers to an*

authorised officer having no jurisdiction over the person, it is a reference to an officer other than an Income-tax Officer having jurisdiction to make an order under sub-section (5). Any other construction will make sub-section (5) unworkable. For the same reason, the authorised officer referred to in sub-section (8) is the same authorised officer referred to in sub-section (9A) as having no jurisdiction over the person. The net result, therefore, would be that if the authorised officer is an Income-tax Officer having jurisdiction over the person, he can retain the records himself for 180 days under sub-section (8). But, however, he will have to make an order under sub-section (5) within 120 days. If the records are required by him for any other purpose, for example under section 288(5), that Income-tax Officer also can ask for approval of the Commissioner for such retention. If the authorised officer happens to be an officer rather than an Income-tax Officer having jurisdiction over the person to make an order under sub-section (5), that authorised officer shall hand over the documents and assets to the Income-tax Officer having jurisdiction over the person and once that is done, the Income-tax Officer gets jurisdiction not only to make an order under sub-section (5) and also to exercise the powers of an authorised officer under sub-section (8) or sub-section (9) of that section. Thus, though under section 132(1), the Director of Inspection may authorise a Deputy Director of Inspection or an Inspecting Assistant Commissioner or an Assistant Director of Inspection or Income-tax Officer and the officer so authorised is referred to as the authorised officer, the provisions of sub-section (8) could not be invoked by such officer unless he happens to be an Income-tax Officer having jurisdiction over the person and who can make an order under sub-section (5). The authorisation given to such officer by the Director of Inspection in turn also only enables such officer to search and seize the documents, records, money, bullion, jewellery or other valuable article or thing and the other powers specifically referred to in the authorisation does not and could not enable that officer to make an order under section 132(5) unless such authorised officer happens to be an Income-tax Officer himself having jurisdiction over such person." It was concluded that *"If the Assistant Director of Inspection had retained the records beyond the*

> *period of 15 days from the date of seizure, the retention itself would have been illegal.*"

20. The Supreme Court affirmed the above decision of the Madras High Court in **Commissioner of Income Tax and Others v. K.V.Krishnaswamy Naidu & Co.** [(2001) 9 SCC 767] and observed that the authorised officer could not pass an order under section 132(5) and he cannot retain the documents beyond 15 days and hence such officer could not have mooted a proposal under section 132(8) for further retention.

21. It is thus clear from the scheme of section 132 as well as from the decisions stated above that the authorised officer who conducted the search and seizure cannot retain the documents or assets beyond 15 days. If the authorised officer cannot retain the assets or the documents, it is ineluctable that the said officer could not have encashed the IVP's. The authorised officer could not have been in *de facto* or *de jure* possession of the assets or documents seized under section 132(1) of the Act after 15 days of seizure.

22. In the instant case, the search and seizure were conducted on 30.12.1994 till 07.01.1995. By 22.01.1995, the 1st respondent had become functus officio and ought to have handed over the documents and assets seized to the 2nd respondent. The fact that

the order under section 132(5) was issued on 28.04.1995 presupposes that the 1st respondent had handed over the documents before that date. In the counter affidavits and the additional counter affidavit it is asserted that the seized documents and assets were handed over to the assessing officer on 10-01-1995. It is manifest that, the 1st respondent could not have exercised any power after 22.01.1995. He could also not have been in possession of any of the documents or assets from 22.01.1995 or thereafter.

23. The first letter demanding encashment of IVP's is dated 29.03.1995, which was even before Ext.P1 order under section 132(5). All the remaining encashments were subsequent to 29.03.1995. It fails our comprehension as to how the 1st respondent could have encashed the IVP's when he was not legally entitled to be in possession of the seized documents. Therefore, no further elaboration is required to conclude that all encashments were done by the 1st respondent without authority or jurisdiction and that too after he had become functus officio. In view of our discussion as above, we are of the considered view that the encashments of the IVP's were contrary to law and were void as having been carried out by a person without authority.

Q.(iii) *Whether the encashed amounts under the IVP's were liable to be adjusted. If so, for which assessment years?*

24. Since we have already found that the encashments of IVP's were bad in law, the consequent adjustment of the IVP's were also illegal.

25. We can approach this issue from another angle also. As mentioned earlier, while section 132 embodies a scheme for search and seizure, section 132B provides how the assets retained under section 132(5) can be dealt with, as stipulated by section 132(6) of the Act.

26. As per section 132B the assets seized under section 132 can be utilised to clear any existing liability under the Act and the liability determined on completion of assessment in respect of which the assessee is in default. It is clear that before determining the liability, there cannot be any adjustment. In the impugned judgment, the learned Single Judge found that "section 132B(i) authorises appropriation of seized assets towards liability only after determination of liability through adjudication". It was also found that the assessment for 1994-95 was completed only on December 23, 1997, while the tax was recovered by encashment of IVP's before completion of the

assessment and even adjusted before the assessee became a defaulter which are both contrary to the section.

27. Ext.P4 series are the assessment orders passed for the assessment years 1990-91 till 1995-96. Except for the assessment year 1995-96, for all other assessment years, assessment orders are dated 23.12.1997, as is seen from Ext.P4, Ext.P4(a), Ext.P4(b), Ext.P4(c), and Ext.P4(d). For the assessment year 1995-96, Ext.P4(e) bears the date 17.11.1997. A reading of Ext.P4(d) and Ext.P4(e) reveals that for those assessment years, i.e 1994-95 and 1995-96, covered by the said orders, the IVP's were adjusted by the department, even prior to the determination of liability. For the year 1995-96, the adjustments were effected on different dates between April, 1995 to January, 1997. For the year 1994-95, the adjustments were affected in August and October 1997. It is thus evident that the IVP's were adjusted against liabilities that were not determined on the date of such adjustments. The adjustments are therefore invalid under this count also. The procedure, the manner of adjustments and the steps adopted by the 2nd respondent were contrary to the provisions of the Act.

28. In this context, it is essential to refer to Ext.R3(a) letter

written by the assessee. The learned Single Judge held the said letter to be an authorisation given to the 2nd respondent to encash the IVP's and to adjust the recovered amounts towards the tax liabilities. With respects, we find ourselves unable to agree to the said finding for more reasons than one.

29. Primarily, Ext.R3(a) cannot be regarded as a letter giving blanket authority to the respondents to encash the IVP's or to adjust the encashed amount towards the tax liability. The letter is in fact addressed to the 2nd respondent requesting him to encash and appropriate the same towards the liability, if it was not possible to ascertain the previous year to which the investment relates. The letter also refers to adjusting the advance tax. Even if it is assumed that the letter confers authority upon the respondents to encash the IVP's, the same has to be done in accordance with law. The officers empowered to act in the exercise of the statutory powers must conform to the statutory prescription in letter and spirit. If the letter Ext.R3(a) is assumed as the authority to encash the IVP's; it is evident that the same being addressed to the 2nd respondent and the encashment having been done by the 1st respondent, the respondents could not have relied upon Ext.R3(a) to justify their

actions. In the above circumstances, we are of the view that the respondents could not have acted upon Ext.R3(a) to encash the IVP's or to adjust the same contrary to the statutory prescriptions.

30. Reliance upon section 292B of the Act is also of no avail to the department. The violation of mandatory conditions are not curable by recourse to section 292B. Further, the action complained of was not done in substance or effect, in conformity with the intent and purpose of the Act.

Q.*(iv) What reliefs are the assessee entitled to?*

31. Since we have found the invocation of IVP's as without authority and the consequent adjustment as done contrary to the provisions of the Act, it is necessary that the status quo ante be restored as on the date of application under the KVS Scheme to meet the ends of justice.

32. In view of the findings recorded by us as above, we set aside the judgment of the learned Single Judge. Ext.P2 series and Ext.P3 series produced in the writ petition are hereby quashed. Ext.P5, insofar as it relates to the assessment years 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96, is also quashed. Even though the KVS Scheme is not in existence now, the appellant ought not to

be prejudiced on account of the long pendency of this writ appeal before this Court. As we have set aside the invocation of the IVP's and the consequent adjustment of the amounts encashed and restored status quo ante, the application for the grant of benefit under the KVS Scheme shall stand revived. The 3rd respondent shall pass fresh orders on the application claiming benefit of the KVS Scheme, in accordance with law.

This writ appeal shall stand allowed as above.

Sd/-

S.V.BHATTI
JUDGE

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX

PETITIONER'S/S' EXHIBITS:

EXT.P1 TRUE COPY OF THE PROCEEDINGS OF THE ASST. COMMISSIONER OF INCOME TAX, INVESTIGATION CIRCULE, KOTTAYAM UNDER SECTION 132(5) OF THE INCOME TAX ACT, 1961 DATED 28.4.1995

EXT.P2 TRUE COPY OF THE LETTER ADDRESSED TO THE POSTMASTER DATED 29.3.1995

EXT.P2(a) TRUE COPY OF THE LETTER ADDRESSED TO THE POSTMASTER DATED 6.8.1997

EXT.P2(b) TRUE COPY OF THE LETTER ADDRESSED TO THE POSTMASTER DATED 21.4.1998

EXT.P2(c) TRUE COPY OF THE LETTER ADDRESSED TO THE POSTMASTER DATED 15.9.1998

EXT.P3 TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED 24.11.1995

EXT.P3(a) TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED 2.1.1996

EXT.P3(b) TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED 10.9.1996

EXT.P3(c) TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED 18.10.1996

EXT.P3(d) TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED NIL RECEIVED ON 30.1.1997

EXT.P3(e) TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED 11.8.1997

EXT.P3(f) TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED 27.8.1997

EXT.P3(g) TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED 6.11.1997

EXT.P3(h) TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED 24.4.1998

EXT.P3(i) TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY FIRST RESPONDENT DATED 24.9.1998

EXT.P4 TRUE COPY OF THE ORDER OF ASSESSMENT U/S.143(3)READ WITH S.147 AND 144A OF INCOME TAX ACT BY THE SECOND RESPONDENT DT.23.12.1997 FOR THE YEAR 1990-91

EXT.P4(a) TRUE COPY OF THE ORDER OF ASSESSMENT U/S.143(3)READ WITH S.147 AND 144A OF INCOME TAX ACT BY THE SECOND RESPONDENT DT.23.12.1997 FOR THE YEAR 1991-92

EXT.P4(b) TRUE COPY OF THE ORDER OF ASSESSMENT U/S.143(3)READ WITH S.147 AND 144A OF INCOME TAX ACT BY THE SECOND RESPONDENT DT.23.12.1997 FOR THE YEAR 1992-93

EXT.P4(c) TRUE COPY OF THE ORDER OF ASSESSMENT U/S.143(3)READ WITH S.147 AND 144A OF INCOME TAX ACT BY THE SECOND RESPONDENT DT.23.12.1997 FOR THE YEAR 1993-94

EXT.P4(d) TRUE COPY OF THE ORDER OF ASSESSMENT U/S.143(3)READ WITH S.147 AND 144A OF INCOME TAX ACT BY THE SECOND RESPONDENT DT.23.12.1997 FOR THE YEAR 1994-95

EXT.P4(e) TRUE COPY OF THE ORDER OF ASSESSMENT U/S.143(3)READ WITH S.144A OF INCOME TAX ACT BY THE SECOND RESPONDENT DT.17.11.1997 FOR THE YEAR 1995-96

EXT.P5 TRUE COPY OF THE ORDER PASSED BY THE THIRD RESPONDENT UNDER THE KAR VIVAD SAMADHAN SCHEME 1998 DT.26.2.1999

EXT.P6 TRUE COPY OF THE STATEMENT SHOWING TOTAL INCOME OF THE PETITIONER FOR THE ASSESSMENT YEAR 1995-96

EXT.P7 TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER DT.7.11.1995 TO THE CHIEF COMMISSIONER OF INCOME TAX, KERALA

EXT.P8 TRUE COPY OF THE LETTER ISSUED TO THE SECOND RESPONDENT BY THE PETITIONER DT.13.9.1995

EXT.P9 TRUE COPY OF THE APPLICATION FILED UNDER SECTION 154 OF THE ACT DT.27.11.1995 BEFORE THE SECOND RESPONDENT

EXT.P10 TRUE COPY OF THE STATEMENT OF REVISED TOTAL INCOME FILED BY THE PETITIONER

EXT.P11 TRUE COPY OF THE LETTER ISSUED TO THE ADDL.COMMISSIONER OF INCOME TAX DT. 7.3.1996 BY THE PETITIONER ALONG WITH STATEMENT OF REVISED INCOME

EXT.P12 TRUE COPY OF THE LETTER ISSUED TO THE SECOND RESPONDENT BY PETITIONER DT.10.3.1997

EXT.P13 TRUE COPY OF ORDER DATED 8.3.2000 UNDER SECTION 132(8) OF THE ACT

EXT.P14 TRUE COPY OF THE INTIMATION UNDER SECTION 143 (1) (a) OF THE ACT ISSUED BBY THE SECOND RESPONDENT DT.24.7.1997 FOR TE ASSESSMENT YEAR 1995-96

EXT.P15 TRUE COPY OF THE LETTER ISSUED BY THE FIRT RESPONDENT TO THE PETITIONER RRECEIVED ON 30.1.1997

EXT.P16 TRUE COPY OF THE LIST OF INDIRA VIKAS PATRA FOUND MENTIONED IN THE PANCHANAMA DT.31.12.1994

EXT.P17 TRUE COPY OF THE STATEMENT SHOWING DATE OF ENCASMENT FURNISHED BY THE 2ND RESPONDENT DT.9.5.2003

EXT.P18 TRUE COPY OF THE STATEMENT FURNISHED BY THE SECOND RESPONDENT SHOWING DETAILS OF DEMAND RISED AND COLLECTIONS MADE DATED 17.1.2003

EXT.P19 TRUE COPY OF THE ORDER DATED 13.3.1997

EXT.P20 TRUE COPY OF THE ORDER DATED 7.3.2000

EXT.P21 TRUE COPY OF THE ORDER DATED 3.3.2003

EXT.P22 TRUE COPY OF THE ORDER UNDER SECTION 154 DATED 22.12.1997 FOR THE ASSESSMENT YEAR 1995-96

EXT.P23 TRUE COPY OF THE NOTICE OF DEMAND UNDER SECTION 156 OF THE INCOME TAX ACT 1961 FOR THE ASSESSMENT YEAR 1995-96

EXT.P24 TRUE COPY OF THE NOTICE OF DEMAND UNDER SECTION 156 OF THE INCOME TAX ACT 1961 FOR THE ASSESSMENT YEAR 1993-94

EXT.P25 TRUE COPY OF THE NOTICE OF DEMAND UNDER SECTION 156 OF THE INCOME TAX ACT 1961 FOR THE ASSESSMENT YEAR 1994-95

EXT.P26 TRUE COPY OF THE NOTICE OF DEMAND UNDER SECTION 156 OF THE INCOME TAX ACT 1961 FOR THE ASSESSMENT YEAR 1991-92

EXT.P26(a) TRUE COPY OF DEMAND UNDER SECTION 156 OF THE INCOME TAX ACT 1961 FOR THE ASSESSMENT YEAR 1992-93

EXT.P27 TRUE COPY OF CMP NO.3366 OF 2000 IN OP 7661/1999 DT. 21.1.2000

EXT.P28 PAPER BOOKCONTAINING EXTRACTS OF SECTIONS AND JUDGMENTS OF HON'BLE SUPREME COURT AND HIGH COURT

RESPONDENT'S/S' EXHIBITS:

EXT.R3(a) LETTER FROM PETITIONER TO FIRST RESPONDENT DT. 13.3.1995

EXT.R3(b) LETTER ISSUED TO THE POSTMASTER BY THE SECOND RESPONDENT DT.6.2.1996

EXT.R2(a) TRUE COPY OF THE REVISED STATEMENT OF TOTAL INCOME FOR THE ASSESSMENT YEAR 1995-96 AND PREVIOUS YEAR ENDED 31.3.1995 OF DR.R.P.PATEL

ANN.R2(b) TRUE COPY OF THE LETTER RECEIVED FROM THE ASST. COMMISSIONER OF INCOME TAX DATED 15.7.2004

ANN.R2(c) TRUE COPY OF THE LETTER TO THE CHIEF COMMISSIONER OF INCOME TAX DATED 17.1.1996

ANN.R2(d) TRUE COPY OF THE LETTER FROM THE PETITIONER DATED 27.11.1995