IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

TUESDAY ,THE 26TH DAY OF MARCH 2019 / 5TH CHAITHRA, 1941

WP(C).No. 9106 of 2019

PETITIONER/S:

K.P.SHAN
AGED 36 YEARS
S/O.PUSHPAN, KILIYANPARAMBIL HOUSE, VELIYANNUR,
THRISSUR-680021.

BY ADVS.
SRI.GEORGE SEBASTIAN
SRI.ARUN LUCKOSE ABRAHAM

RESPONDENT/S:

1 THE PRINCIPAL COMMISSIONER OF INCOME TAX,
AYAKAR BHAVAN, THRISSUR-680001.

2 THE JOINT COMMISSIONER OF INCOME TAX,
RANGE-2, AYAKAR BHAVAN, THRISSUR-680001.

3 THE COMMISSIONER OF INCOME TAX(APPEAL),
THRISSUR-680001.

4 THE INCOME TAX OFFICER (TRO AND TECH),
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX,
SHAKTHAN NAGAR, THRISSUR-680001.

5 THE INCOME TAX OFFICER,
WARD 2 (4), THRISSUR-680001.

OTHER PRESENT:

SC SRI. JOSE JOSEPH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.03.2019, ALONG WITH WP(C).9123/2019, WP(C).9141/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

TUESDAY ,THE 26TH DAY OF MARCH 2019 / 5TH CHAITHRA, 1941

WP(C).No. 9123 of 2019

PETITIONER/S:

SHYLA PUSHPAN
AGED 55 YEARS
W/O.PUSHPAN, KILIYANPARAMBIL HOUSE, VELIYANNUR, THRISSUR-680021.

BY ADVS.
SRI.GEORGE SEBASTIAN
SRI.ARUN LUCKOSE ABRAHAM

RESPONDENT/S:

1 THE PRINCIPAL COMMISSIONER OF INCOME TAX, AYAKAR BHAVAN, THRISSUR-680001.

2 THE JOINT COMMISSIONER OF INCOME TAX, RANGE-2, AYAKAR BHAVAN, THRISSUR-680001.

3 THE COMMISSIONER OF INCOME TAX(APPEAL), THRISSUR-680001.

4 THE INCOME TAX OFFICER (TRO AND TECH),
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX,
SHAKTHAN NAGAR, THRISSUR-680001.

5 THE INCOME TAX OFFICER,
WARD 2(4), THRISSUR-680001.

OTHER PRESENT:

SC SRI. JOSE JOSEPH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.03.2019, ALONG WITH WP(C).9141/2019, WP(C).9106/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

TUESDAY ,THE 26TH DAY OF MARCH 2019 / 5TH CHAITHRA, 1941

WP(C).No. 9141 of 2019

PETITIONER/S:

K.P.PUSHYA
AGED 37 YEARS
D/O PUSHPAN, KILIYANPARAMBIL HOUSE, VELIYANNUR,
THRISSUR-680 021.

BY ADVS.
SRI.GEORGE SEBASTIAN
SRI.ARUN LUCKOSE ABRAHAM

RESPONDENT/S:

1 THE PRINCIPAL COMMISSIONER OF INCOME TAX
AYAKAR BHAVAN, THRISSUR-680 001.

2 THE JOINT COMMISSIONER OF INCOME TAX
RANGE-2, AYAKAR BHAVAN, THRISSUR-680 001.

3 THE COMMISSIONER OF INCOME TAX (APPEAL)
THRISSUR-680 001.

4 THE INCOME TAX OFFICER (TRO AND TECH)
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX,
SHAKTHAN NAGAR, THRISSUR -680 001.

5 THE INCOME TAX OFFICER
WARD 2(4), THRISSUR-680 001.

OTHER PRESENT:
SC SRI. JOSE JOSEPH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.03.2019, ALONG WITH WP(C).9123/2019, WP(C).9106/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

[WP(C) 9106/2019 ,WP(C).9123/2019 ,WP(C).9141/2019]

Heard Sri George Sebastian, the counsel for the petitioner, and Sri Jose Joseph, the learned Standing Counsel for the Income Tax Department.

2. The petitioners in these cases pray for mandamus directing the third respondent to consider and dispose of Ext.P2 appeal filed against the assessment order dated 03.12.2018 and also Ext.P7 stay petition expeditiously. The petitioner seeks stay of proceedings pursuant to Ext.P1, including Ext.P8, till the appeal (Ext.P2) and stay petition (Ext.P7) are considered and disposed of by the third respondent.

3. The learned counsel for the petitioner submits that the appeal has been filed within the period of limitation and

stay petition is also moved by making out *prima facie* grounds for granting stay of assessment order dated 03.12.2018. The non-consideration of stay petition firstly is without just reason and secondly when the application for stay is pending, addressing Ext.P8 to the State Bank of India calling upon the Bank to credit the Central Government account, the amount that may be deposited to the credit of assessee's account. It is further contended that there are exceptionally strong grounds for canvasing before the appellate authority in Ext.P2 appeal and the recovery if is completed, the assessee will suffer financial loss and irreparable injury. The counsel prays for a direction to immediately dispose of the stay petition and also appeal within a reasonable period of time.

4. Sri Jose Joseph, the Standing Counsel for the respondents submits that the assessing officer has put the petitioner on the condition of depositing 20% to work out the

remedy of appeal in the case on hand. The assessee has not co-operated with the assessing officer while the assessment was undertaken and the assessment order passed. According to him, *prima facie* as things stand at present the order does not suffer from any infirmity and prays for dismissing this writ petition.

5. The counsel, however, does not object to directing disposal of the stay petition at the earliest; however he insists upon the condition to deposit 20%, and that the petitioner can avail the benefit of the stay and the appeal could also be disposed of expeditiously.

6. The writ prayer is substantially against the inaction of the appellate authority/ the third respondent in disposing of Ext.P7 stay petition and Ext.P2 appeal. After perusing the order of assessment and also the condition imposed by the fifth respondent, I am satisfied that these writ petitions can be

disposed of by these orders:

(a) The third respondent considers and disposes of Ext.P7 stay petition as expeditiously as possible, preferably within two months from the date of receipt of the copy of this judgment.

(b) The petitioner is directed to deposit 10% of the amount demanded through Ext.P2 within four weeks from today and files proof of payment before the third respondent to enable the third respondent to consider the stay application.

(c) Ext.P2 appeal is also considered and disposed of expeditiously, subject to the petitioner complying with the other conditions prescribed in law.

(d) Till then there shall be a stay of recovery pursuant to Ext.P1 assessment order.

Sd/-

S.V.BHATTI

JUDGE

jjj

APPENDIX OF WP(C) 9106/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF THE ASSESSMENT ORDER ALONG WITH NOTICE OF DEMAND DATED 3.12.2013 ISSUED BY THE 5TH RESPONDENT.
EXHIBIT P2	A TRUE COPY OF THE STATUTORY APPEAL FILED UNDER SECTION 246A OF THE INCOME TAX ACT, 1961 DATED 2.1.2019 BEFORE THE 3RD RESPONDENT.
EXHIBIT P3	A TRUE COPY OF THE PETITION FOR STAY DATED 2.1.2019 SUBMITTED BEFORE THE 5TH RESPONDENT.
EXHIBIT P4	A TRUE COPY OF THE COMMUNICATION DATED 17.1.2019 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.
EXHIBIT P5	A TRUE COPY OF THE STAY PETITION DATED 29.1.2019 SUBMITTED BEFORE THE 1ST RESPONDENT.
EXHIBIT P6	A TRUE COPY OF THE COMMUNICATION DATED 27.2.2019 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
EXHIBIT P7	A TRUE COPY OF THE PETITION FOR STAY DATED 5.3.2019 FILED BEFORE THE 3RD RESPONDENT.
EXHIBIT P8	A TRUE COPY OF THE NOTICE DATED 18.3.2019 ISSUED BY THE 5TH RESPONDENT.

APPENDIX OF WP(C) 9123/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF THE ASSESSMENT ORDER ALONG WITH NOTICE OF DEMAND DATED 3.12.2018 ISSUED BY THE 5TH RESPONDENT.
EXHIBIT P2	A TRUE COPY OF THE STATUTORY APPEAL FILED UNDER SECTION 246A OF THE INCOME TAX ACT, 1961 DATED 2.1.2019 BEFORE THE 3RD RESPONDENT.
EXHIBIT P3	A TRUE COPY OF THE PETITION FOR STAY DATED 2.1.2019 SUBMITTED BEFORE THE 5TH RESPONDENT.
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EXHIBIT P7	A TRUE COPY OF THE PETITION FOR STAY DATED 5.3.2019 FILED BEFORE THE 3RD RESPONDENT.
EXHIBIT P8	A TRUE COPY OF THE NOTICE DATED 18.3.2019 ISSUED BY THE 5TH RESPONDENT.

APPENDIX OF WP(C) 9141/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF THE ASSSESSMMENT ORDER ALONG WITH NOTICE OF DEMAND DATED 3.12.2018 ISSUED BY THE 5TH RESPONDENT.
EXHIBIT P2	A TRUE COPY OF THE STATUTORY APPEAL FILED UNDER SECTION 246A OF THE INCOME TAX ACT, 1961 DATED 2.1.2019 BEFORE TEH 3RD RESPONDENT.
EXHIBIT P3	A TRUE COPY OF THE PETITION FOR STAY DATED 2.1.2019 SUBMITTED BEFORE THE 5TH RESPONDENT.
EXHIBIT P4	A TRUE COPY OF THE COMMUNICATION DATED 17.1.2019 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.
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EXHIBIT P7	A TRUE COPY OF THE PETITION FOR STAY DATED 5.3.2019 FILED BEFORE THE 3RD RESPONDENT.
EXHIBIT P8	A TRUE COPY OF THE NOTICE DATED 18.3.2019 ISSUED BY THE 5TH RESPONDENT.