



2023:KER:73244

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 22<sup>ND</sup> DAY OF NOVEMBER 2023 / 1ST AGRAHAYANA,  
1945

WA NO. 1948 OF 2023

AGAINST THE JUDGMENT DATED 8.9.2023 IN WP(C) 14030/2022 OF  
HIGH COURT OF KERALA

APPELLANT/PETITIONER:

PRESTIGE MARKETING DIVISION  
IX/28A ID AREA, A.M.ROAD, ERUMATHALA, ALUVA,  
KERALA, REPRESENTED BY ITS MANAGING PARTNER,  
MR.C.A.SUBAIR, PIN - 683112

BY ADVS.ANIL D. NAIR  
TELMA RAJU  
AADITYA NAIR

RESPONDENTS/RESPONDENTS:

- 1 PRINCIPAL COMMISSIONER OF INCOME TAX  
CENTRAL REVENUE BUILDING, IS PRESS ROAD, COCHIN,  
PIN - 692018
- 2 THE ASSISTANT COMMISSIONER OF INCOME TAX,  
CIRCLE-1, ALUVA, PIN - 683101

SC SRI.JOSE JOSEPH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
22.11.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



## **J U D G M E N T**

### **Dr. A.K.Jayasankaran Nambiar, J.**

The petitioner in W.P.(C).No.14030/2022 is the appellant before us, aggrieved by the judgment dated 8.9.2023 of the learned Single Judge in the writ petition.

2. Inasmuch as the facts relevant for disposing this appeal have already been stated in the impugned judgment, we do not deem it necessary to reiterate the facts here. Briefly stated, the issue that arose before the learned Single Judge was whether during the pendency of an appeal before the First Appellate Authority under the Income Tax Act (for short 'the Act'), the CIT could exercise its power of revision under Section 263 of the Act on an issue that had been decided to its prejudice in the assessment order, which was the subject matter of appeal before the Appellate Authority. Although it was the contention of the writ petitioner before the learned Single Judge that, since it had preferred an



appeal against the assessment order and the appeal was pending before the First Appellate Authority, the Revisional Authority under the Act could not exercise its power of revision in relation to the same issue, the learned Single Judge found, based on the submissions of the learned Standing Counsel for the Income Tax Department, that the issue that was the subject matter of the revision proceedings was not the same as the one that was decided against the assessee in the assessment order which was the subject matter of the appeal. He, therefore, found that the Revenue was justified in initiating proceedings under Section 263 of the Act to correct the wrong rate of tax that had been applied and which worked to the benefit of the assessee in the assessment order that was the subject matter of the appeal.

We see no reason to doubt the correctness of the findings of the learned Single Judge, who has relied on various decisions of the Supreme Court to come to his conclusion. We also find that, at any rate, the right of the appellant to challenge the order proposed to be passed by the Assessing Officer pursuant to Ext.P5 revision order passed in accordance with Section 263 of the Act has been reserved to the appellant. The appellant therefore cannot be seen as prejudiced in any manner. For the



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reasons stated above, the Writ Appeal fails, and it is accordingly dismissed.

Sd/-

**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

sd/-

**DR. KAUSER EDAPPAGATH**  
**JUDGE**

kp