



2023:KER:77294

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 6<sup>TH</sup> DAY OF DECEMBER 2023/15TH AGRAHAYANA, 1945

WA NO. 2100 OF 2023

AGAINST THE JUDGMENT WP (C) 2789/2023 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

HEARTWARES MEDICALS INDIA PRIVATE LIMITED,  
DOOR NO.3/1008-B, IMA HALL ROAD, NADAKKAVU,  
CALICUT KERALA, INDIA-673011. REPRESENTED BY ITS  
MANAGING DIRECTOR MR.SHIHABUDEEN.K. NEW ADDRESS  
HEARTWARES MEDICALS INDIA PRIVATE LIMITED DOOR  
NO.3/1008-B, IMA HALL ROAD, NADAKKAVU, CALICUT,  
KERALA, INDIA REPRESENTED BY ITS MANAGING DIRECTOR  
MR.SHIHABUDEEN.K., PIN - 673011

BY ADVS.ANIL D. NAIR

ANJANA A.

P.K.BIJU

TELMA RAJU

RESPONDENT/RESPONDENT:

ASSESSMENT UNIT, INCOME TAX DEPARTMENT,  
NATIONAL FACELESS ASSESSMENT CENTRE (NFAC), NEW  
DELHI, PIN - 110001

BY ADV. P.R.AJITH KUMAR, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
06.12.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**J U D G M E N T****Dr. Kauser Edappagath, J.**

This writ appeal has been filed challenging the judgment of the learned Single Judge in WP(c) No.2789/2023 dated 22/11/2023.

2. The appellant is the writ petitioner. The writ petition was filed challenging the assessment order completed u/s 143(3) r/w 144B of the Income Tax Act, 1961 (for short, 'the IT Act'), on the premises that the addition made under Section 68 of ₹6,96,31,355/- and assessed at a higher rate u/s 115BBE was against the provisions of the statute and in violation of the principles of natural justice. After hearing both sides, the learned Single Judge dismissed the writ petition, relegating the appellant to the statutory appellate remedy. It is challenging the said judgment; the appellant is before us.

3. We have heard Sri.Anil D. Nair, the learned counsel for the appellant and Sri.P.R.Ajith Kumar, the learned standing



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counsel for the Income Tax Department.

4. The appellant has a statutory remedy of appeal against the assessment order. Instead of exhausting the remedy, the appellant rushed to this court with a writ petition. The appellant was put to notice, and after that, the assessment proceedings were completed. In exercising the power of judicial review under Article 226 of the Constitution of India, this court cannot consider the merits of the assessment order. We do not find that the impugned assessment order is without jurisdiction or that there has been any violation of the principles of natural justice. Hence, the learned Single Judge was absolutely justified in relegating the appellant to the statutory appellate remedy. We find no reason to interfere with the said judgment. The time granted by the learned Single Judge to prefer the appeal is already over. In these circumstances, we permit the appellant to file an appeal under Section 246A of the IT Act before the Appellate Authority against the impugned assessment order within a period of one week from today. The appellant is also free to file an application for stay. If such an appeal and stay



WA No.2100/2023

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application are filed, the Appellate Authority is directed to consider and dispose of either the appeal itself or the stay application within a period of one month from the receipt of the same after hearing both sides. Needless to say, during the said period of one month, recovery proceedings against the appellant for recovery of the amounts confirmed by the assessment order shall be kept in abeyance.

The writ appeal stands disposed with the above observation.

Sd/-  
**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Sd/-  
**DR. KAUSER EDAPPAGATH**  
**JUDGE**

Rp