



IN THE HIGH COURT OF KERALA AT ERNAKULAM

2023:KER:74601

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945

WP(C) NO. 21424 OF 2023

PETITIONER/S:

GENESIS INSTITUTE OF MEDICAL SCIENCE PRIVATE
LIMITED, 32/1094/1-8, CHALA BYPASS, THOTTADA POST,
KANNUR, REPRESENTED BY ITS DIRECTOR SRI. MOHANAN
ATHAKASSERY, PIN - 670007

BY ADVS.

P.J.ANILKUMAR (A-1768)

K.N.SREEKUMARAN

N.SANTHOSHKUMAR

RESPONDENT/S:

- 1 INCOME TAX OFFICER.,
WARD-1, AAYKAR BHAVAN, MELECHOVVA, KANNOTHUMCHAL,
KANNUR, PIN - 670006
- 2 ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF
INCOME TAX/INCOME TAX OFFICER,
ASSESSMENT UNIT, INCOME TAX DEPARTMENT, NATIONAL
FACELESS ASSESSMENT CENTER, NEW DELHI-100001.
- 3 ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF
INCOME TAX/INCOME TAX OFFICER, NATIONAL FACELESS
ASSESSMENT CENTRTE, INCOME TAX DEPARTMENT ,NEW
DELHI-100001.
- 4 ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF
INCOME TAX/INCOME TAX OFFICER,
NATIONAL FACELESS PENALTY CENTRE, INCOME TAX
DEPARTMENT, NEWDELHI-100001.

BY ADV CHRISTOPHER ABRAHAM, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

The present writ petition has been filed impugning order in Ext.P9 dated 8.6.2023 passed under Section 270A of the Income Tax Act, 1961 (“Act”, for short) in respect of the assessment year 2021-22. The assessment with respect to the petitioner was finalised by adding Rs.8,37,97,401/- to the returned income of the petitioner for the assessment year under consideration. It was found that since the said amount was detected during the course of scrutiny assessment proceedings, penalty proceedings under Section 270A of the Act were to be initiated for under-reporting of income in consequence of misreporting of income.

2. The petitioner has not challenged the assessment order and is only aggrieved by the penalty order passed under Section 270A of the Act. The petitioner was issued show cause notice dated 9.12.2022, for filing its reply by 31.12.2022. In response to the said notice, the petitioner filed



its response on 30.12.2022 and requested for adjournment. Thereafter, another show cause notice was served on 6.4.2023 asking the petitioner as to why penalty under Section 270A of the Act for under-reporting of income in consequence of misreporting should not be levied. In response to the said notice, the assessee filed its reply on 12.4.2023 by attaching some judgments passed by the Income Tax Appellate Tribunal.

3. On perusal of the impugned order, Ext.P9, it is evident that no date for hearing was fixed, that after service of the show cause notice dated 6.4.2023 on the petitioner and filing of its reply dated 12.4.2023 to the said show cause notice, the impugned order came to be passed on 8.6.2023. This Court is of the view that since the order impugned has been passed in violation of the principles of natural justice as no date of hearing was communicated to the petitioner after petitioner's reply dated 12.4.2023 to the show cause notice dated 6.4.2023, the impugned order dated 8.6.2023,



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Ext.P9, is set aside and the matter is remanded back to the 4th respondent to communicate the date of hearing to the petitioner on the Portal of the Income Tax Department and also through the e-mail-id given to the Income Tax Department. It is made clear that in case the petitioner fails to appear and make submissions in response to the notice of hearing so to be given by the 4th respondent, no further opportunity shall be granted to the petitioner. The petitioner shall not seek any adjournment on the date of hearing so fixed by the 4th respondent.

with the aforesaid observations, the present writ petition stands allowed.

Pending interlocutory application, if any, in the writ petition stands dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

jg



APPENDIX OF WP(C) 21424/2023

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF THE E-ACKNOWLEDGEMENT DOCUMENT BEARING NUMBER: 365669130150322 FOR FILING OF ITR-6 RELATING TO AY-2021-22 DATED 15..03..2022 .
- Exhibit-P2 TRUE COPY OF THE ORDER U/S 143(3) READ WITH SECTION 144B OF THE ACT DATED 09..12..2022 ISSUED BY THE 2ND RESPONDENT.
- Exhibit-P3 TRUE COPY OF THE NOTICE U/S.274 READ WITH SECTION 270A OF THE ACT DATED 09..12..2022 ISSUED BY THE 2ND RESPONDENT.
- Exhibit-P4 TRUE COPY OF THE RESPONSE FILED BY THE PETITIONER DATED 30..12..2022 AGAINST EXT-P3 NOTICE ISSUED BY THE 2ND RESPONDENT.
- Exhibit-P5 TRUE COPY OF THE NOTICE DATED 06..04..2023 U/S.270A OF THE ACT WITH DIN:ITBA/PNL/F/270A/2023-24/1051916204(1) ISSUED BY THE 2ND RESPONDENT.
- Exhibit-P6 TRUE COPY OF THE REPLY DATED 12..04..2023 FILED AGAINST EXT-P5 NOTICE THROUGH PORTAL VIDE E-ACKNOWLEDGEMENT NO: 114107141120423.
- Exhibit-P7 TRUE COPY OF THE INTIMATION OF SCHEDULE OF PERSONAL HEARING THROUGH VIDEO CONFERENCING DATED 25..05..2023 VIDE DIN:ITBA/PNL/S/VC NOTICE/2023-24/1053159249(1) .
- Exhibit-P8 TRUE COPY OF THE WEB PAGE OF THE INCOME TAX DEPARTMENT DATED 30..05..2023 EVIDENCING THE FILING OF THE ADJOURNMENT APPLICATION ALONG WITH ADJOURNMENT APPLICATION AGAINST



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EXT-P7 NOTICE .

- Exhibit-P9 TRUE COPY OF THE PENALTY PROCEEDINGS
U/S.270A OF THE ACT DATED 08..06..2023 FOR
THE ASSESSMENT YEAR 2021-22.
- Exhibit-P10 TRUE COPY OF THE NOTIFICATION NO: 54/2022
DATED 27..05..2022 ISSUED BY THE CENTRAL
BOARD OF DIRECT TAXES.
- Exhibit-P11 TRUE COPY OF THE JUDGMENT IN RENJU VS THE
ADDITIONAL/JOINT/DEPUTY/ASSISTANT
COMMISSIONER OF INCOME TAX , IN W.P.(C)
11735/2022 DATED 16..03..2023.