



2023:KER:74517

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 22ND DAY OF NOVEMBER 2023 / 1ST AGRAHAYANA,

1945

WP(C) NO. 2789 OF 2023

PETITIONER/S:

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.

BY ADVS.
ANIL D. NAIR
TELMA RAJU
P.K.BIJU
ANJANA A.

RESPONDENT/S:

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

BY ADV CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

THIS WRIT PETITION (CIVIL) 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

The present writ petition has been filed under Article 226 of the Constitution of India impugning the assessment order in Ext.P13 dated 26.12.2022 in respect of the assessment year 2021-22. Learned counsel for the petitioner submits that enquiries were held behind the back of the petitioner-assessee in respect of certain sales effected to different hospitals and the assessing authority did not take into consideration the details of the confirmation of the sales made by the petitioner to different hospitals, and the amount of sale considerations had been added as income of the petitioner. It is further submitted that the petitioner had obtained the details with regard to confirmation of the sales from the said hospitals after the assessment order. He, therefore, prays that the matter may be remanded back to the assessing authority with direction to re-consider



the same on the basis of the sales confirmation as per Ext.P14 series documents.

2. Under Section 133C of the Income Tax Act, 1961, (“Act”, for short) there is no requirement that notices for confirming the sales etc. should be issued with the knowledge of the assessee. The assessment order would disclose that in respect of the alleged sales effected by the petitioner to different hospitals, notice under Section 133(6) was sent to each of the hospitals. However, no response was received from the said hospitals. During the assessment proceedings, the petitioner did not file sale confirmation letters, which have been obtained by him after the assessment order. Once the sales confirmation letters were not before the assessing authority, the assessment order cannot be faulted with for not considering the evidence, which were collected by the petitioner- assessee after the issuance of the assessment order. The petitioner has the remedy of appeal against the assessment order. Instead of filing



appeal against the assessment order, the petitioner has approached this Court with this writ petition.

3. In exercise of the power of judicial review under Article 226 of the Constitution of India, this Court can interfere with the proceedings only when the same has been issued without jurisdiction or there has been an infraction of principles of natural justice. The petitioner was put to notice and thereafter the assessment proceedings had been completed. Therefore, I do not find that the impugned assessment order is without jurisdiction or there has been any violation of principles of natural justice. This Court would not like to consider the merits of the assessment order. The petitioner was given notice under Section 142(1) of the Act.

In view of the above, the present writ petition is disposed of with liberty to the petitioner to file appeal under Section 246A of the Act before the appellate authority against the impugned assessment order, within a period of



fifteen (15) days from today. If such an appeal is filed before the appellate authority as above, the appellate authority should consider the same on merits, without going into the question of limitation. It is directed that no coercive steps shall be taken against the petitioner for a period of fifteen (15) days from today, for realisation of the tax determined vide the impugned assessment order.

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

Sd/-
DINESH KUMAR SINGH
JUDGE



WP (C) NO. 2789 OF 2023

APPENDIX OF WP (C) 2789/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTICE UNDER SECTION 143(2) DATED 28.06.2022 ISSUED BY THE RESPONDENT TO THE PETITIONER .
- Exhibit P2 TRUE COPY OF THE SCREENSHOT ACKNOWLEDGEMENT DATED 11.07.2022 OF THE REPLY FILED BY THE PETITIONER.
- Exhibit P3 TRUE COPY OF THE NOTICE DATED 11.10.2022 UNDER SECTION 142(1) ALONG WITH ANNEXURE ISSUED BY THE RESPONDENT TO THE PETITIONER.
- Exhibit P4 TRUE COPY OF THE SCREENSHOT OF THE ACKNOWLEDGEMENT DATED 24.10.2022 OF THE REPLY FILED BY THE PETITIONER.
- Exhibit P5 TRUE COPY OF THE NOTICE DATED 31.10.2022 UNDER SECTION 142(1) ALONG WITH ANNEXURE ISSUED BY THE RESPONDENT TO THE PETITIONER.
- Exhibit P6 TRUE COPY OF THE SCREENSHOT OF THE ACKNOWLEDGEMENT DATED 05.11.2022 OF THE REPLY FILED BY THE PETITIONER.
- Exhibit P7 TRUE COPY OF THE NOTICE DATED 09.11.2022 UNDER SECTION 142(1) ALONG WITH ANNEXURE ISSUED BY THE RESPONDENT TO THE PETITIONER.
- Exhibit P8 TRUE COPY OF THE SCREENSHOT OF THE ACKNOWLEDGEMENT DATED 26.11.2022 OF THE REPLY FILED BY THE PETITIONER.
- Exhibit P9 TRUE COPY OF THE NOTICE DATED 21.11.2022 UNDER SECTION 142(1) ISSUED BY THE RESPONDENT



WP (C) NO. 2789 OF 2023

TO THE PETITIONER.

Exhibit P10 TRUE COPY OF THE SCREENSHOT OF THE
ACKNOWLEDGEMENT DATED 26.11.2022 OF THE REPLY
FILED BY THE PETITIONER.

Exhibit P11 TRUE COPY OF THE SHOW CAUSE NOTICE DATED
17.12.2022 ISSUED BY THE RESPONDENT TO THE
PETITIONER .

Exhibit P12 TRUE COPY OF THE SCREENSHOT OF THE
ACKNOWLEDGEMENT DATED 21.12.2022 OF THE REPLY
FILED BY THE PETITIONER.

Exhibit P13 TRUE COPY OF THE ASSESSMENT ORDER FOR THE A.Y
2021-22 ISSUED BY THE RESPONDENT TO THE
PETITIONER.

Exhibit P14 TRUE COPY OF THE LETTER DATED 13.01.2023
CONFIRMING THE PURCHASE EFFECTED BY THE
PETITIONER FROM TRANSLUMANIA THERAPEUTICS
LLP.

Exhibit P14(a) TRUE COPY OF THE LETTER CONFIRMING THE
PURCHASE EFFECTED BY THE PETITIONER FROM
LAKESHORE HOSPITAL AND RESEARCH CENTRE LTD.

Exhibit P14(b) TRUE COPY OF THE LETTER DATED 20.01.2023
CONFIRMING THE PURCHASE EFFECTED BY THE
PETITIONER FROM TELlicherry CO- OPERATIVE
HOSPITAL.

Exhibit P14(c) TRUE COPY OF THE LETTER DATED 10.01.2023
CONFIRMING THE PURCHASE EFFECTED BY THE
PETITIONER FROM STARCARE HOSPITAL.

Exhibit P14(d) TRUE COPY OF THE LETTER DATED 11.01.2023
CONFIRMING THE PURCHASE EFFECTED BY THE
PETITIONER FROM MOTHER CARE & HEALTH CENTRE



WP (C) NO. 2789 OF 2023

PVT LTD

- Exhibit P14(e) TRUE COPY OF THE LETTER DATED 04.01.2023 CONFIRMING THE PURCHASE EFFECTED BY THE PETITIONER FROM FAIR PRICE MEDICAL SHOP.
- Exhibit P14(f) TRUE COPY OF THE LETTER DATED 06.01.2023 CONFIRMING THE PURCHASE EFFECTED BY THE PETITIONER FROM EMS MEMORIAL CO- OPERATIVE HOSPITAL & RESEARCH CENTRE.
- Exhibit P14(g) TRUE COPY OF THE LETTER DATED 09.01.2023 CONFIRMING THE PURCHASE EFFECTED BY THE PETITIONER FROM SREE ANJANEYA MEDICAL TRUST.
- Exhibit P14(h) TRUE COPY OF THE LETTER DATED 12.01.2023 CONFIRMING THE PURCHASE EFFECTED BY THE PETITIONER FROM RAJIV GANDHI CO- OPERATIVE HOSPITAL.
- Exhibit P14(i) TRUE COPY OF THE LETTER DATED 20.01.2023 CONFIRMING THE PURCHASE EFFECTED BY THE PETITIONER FROM BHARAT HOSPITAL.