IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 2ND DAY OF NOVEMBER 2023 / 11TH KARTHIKA, 1945

WP(C) NO. 34824 OF 2023

PETITIONER:

KATTERI KADERI,
SAJITHA MANZIL,SIVAPURAM,
PADUPARA,KANNUR, PIN – 670702.

BY ADVS.
SRI. P. RAGHUNATHAN
SRI. RISHAL K.
SRI. PREMJIT NAGENDRAN

RESPONDENTS:

1 ASSESSMENT UNIT HEADED BY PRINCIPLE CHIEF COMMISSIONER, INCOME TAX DEPARTMENT, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NEW DELHI, PIN – 110001.

2 INCOME TAX OFFICER, WARD 3,KANNUR,KONNOTHUMCHAL, CHOVVA P.O., KANNUR, PIN – 670006.

3 CENTRAL BOARD OF DIRECT TAXES, NORTH BLOCK,NEW DELHI, PIN - 110001 BY CHAIRMAN.

4 GOVERNMENT OF INDIA, MINISTRY OF FINANCE, NEW DELHI,PIN – 110001, BY SECRETARY.

BY ADV.
SRI. CHRISTOPHER ABRAHAM – SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DINESH KUMAR SINGH, J.

W.P.(C) No.34824 of 2023

Dated this the 2nd day of November, 2023

JUDGMENT

1. The present writ petition has been filed by the petitioner, an assessee under the provisions of the Income Tax Act, impugning the assessment order dated 15.03.2023 in Exhibit P-1 passed under the provisions of Section 147 read with Section 144 and 144B of the Income Tax Act.

2. The petitioner an assessee did not filed his return of income under Section 139 (1) of the Income Tax Act, 1961 (hereinafter referred to as the 'IT Act, 1961') for the assessment years 2018-19.

3. The specific information was flagged as per Risk Management Strategy formulated by the CBDT through ITBA software under the head 'High Risk CRI/VRU cases'.

4. As per the specific information, the petitioner had carried out the transactions mentioned in the impugned assessment order during the financial year 2017-18, relevant to the assessment year 2018-19. consequently the case was reopened. The transaction

would disclose the huge cash deposit and receipts including purchase of vehicle worth Rs.81,59,456/-.

5. The petitioner case was reopened within the meaning of Section 147 of the IT Act, 1961 and notice under Section 148 was issued and served on the petitioner after taking necessary prior approval from the competent authority under Section 151 of the IT Act, 1961. Reasons for reopening the assessment are also communicated by the notice issued under Section 148. The petitioner did not responded to the said notice and thereafter, an order under Section 148A (d) of the IT Act, 1961 dated 30.03.2022 came to be passed and final notice under Section 148 of the IT Act, 1961 dated 30.03.2022 was issued to the petitioner asking him to file his return of income. A notice under Section 142 (1) with detailed questionnaire was also issued to the petitioner. Paragraph 3 of the assessment order would note of the dates of notices etc. and also suggest that none of it was responded by the petitioner.

6. In the absence of any response from the petitioner, the notice was also sent through speed post with consignment number and as per the verification of the speed post, the said letter was delivered on the petitioner on 07.03.2023 and therefore, a show cause notice

under Section 144 of the IT Act, 1961 was issued and served on the petitioner on 27.01.2023 giving the assessee an opportunity to show cause within time period prescribed as to why in the absence of compliance by the assessee, the time barring should not be concluded logically *ex parte*. The petitioner however did not responded to any such notices and communications and considering the record available with the Assessing Officer, the assessment under Section 144 read with Section 147 and Section 144B of the IT Act, 1961 was finalised on total income of Rs. 2,27,95,237/-. the interest under Section 234A, 234B and 234C of the IT Act, 1961 was issued and Charge fees under Section 234F of the IT Act, 1961 for not filing the return for the demand notice has been issued. It has been further said that further proceedings for depositing the penalty under Section 271AAC(1) would be initiated against the petitioner.

7. The Learned Counsel for the petitioner submits that the petitioner did not receive any of the notices as mentioned in the assessment order.

8. The said contention is only to be rejected. Every communication/notice is not only uploaded in the portal, but it also

communicated in e-mail with real time alert by messages. Therefore, the spacious ground taken in the writ petition that there has been violation of the principles of natural justice does not merit consideration by this Court. The petitioner has not disputed the cash deposits and transactions as mentioned in the assessment order. The petitioner did not participate with the assessment proceedings initiated under Section 147 read with Section 148 inasmuch as the petitioner did not file return of his income and now he has approached this Court by filing the present writ petition on the ground that there was violation of principle of natural justice. This Court does not find that there has been any violation of principles of natural justice when the petitioner chose not to respond to any of the notices. The assessment order passed does not call for any interference by this Court and therefore, the present writ petition is hereby dismissed leaving it open to the petitioner to file any other remedy, if available to him under the law.

Sd/-
DINESH KUMAR SINGH
JUDGE

Svn

APPENDIX OF WP(C) 34824/2023

PETITIONER'S EXHIBITS

EXHIBIT P-1	COPY OF ASSESSMENT ORDER DT.15.03.2023 FOR A.Y 2018.19
EXHIBIT P-2	COPY OF NOTICE U/S 148A[B] DT.18.03.2022
EXHIBIT P-3	COPY OF ORDER U/S 148A[D] DT. 30.03.2022
EXHIBIT P-4	COPY OF NOTICE FOR A.Y 2018.19 U/S 148 DT. 30.03.2022 BY SECOND RESPONDENT
EXHIBIT P-5	COPY OF NOTICE DT. 30.11.2022 U/S 142[1] BY FIRST RESPONDENT
EXHIBIT P-6	COPY OF SHOW CAUSE NOTICE DT. 27.01.2023 BY SECOND RESPONDENT
EXHIBIT P-7	COPY OF NOTICE DT 16.02.2023 ISSUED BY FIRST RESPONDENT
EXHIBIT P-8	COPY OF NOTICE DT. 18.07.2023 ISSUED BY NATIONAL FACELESS ASSESSMENT CENTRE
EXHIBIT P-9A	PHOTOCOPY OF INTERIM ORDER IN WPC NO. 19801/21 DT. 23.09.2021
EXHIBIT P-9B	PHOTOCOPY OF INTERIM ORDER IN WPC NO. 28040/21 DT. 08.12.2021
EXHIBIT P-9C	PHOTOCOPY OF INTERIM ORDER IN WPC NO. 13356/22 DT. 08.04.2022