



2023:KER:71390

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 10TH DAY OF NOVEMBER 2023 / 19TH KARTHIKA, 1945

WP(C) NO. 35663 OF 2023

PETITIONER/S:

A. E. VARGHESE
AGED 65 YEARS
S/O. A. E. EDICHANDI, ARAKKANATIL HOUSE, ODAMPALLY
ROAD, THOPPUMPADY, ERNAKULAM, KOCHI, PIN - 682005

BY ADVS.
ASWIN GOPAKUMAR
ADITYA VENUGOPALAN
ANWIN GOPAKUMAR
NIKITHA SUSAN PAULSON
MAHESH CHANDRAN
SARANYA BABU
SHALLET K. SAM
TOMY THOMAS

RESPONDENT/S:

- 1 THE COMMISSIONER OF INCOME TAX (APPEALS)
THE INCOME TAX DEPARTMENT NATIONAL FACELESS
ASSESSMENT CENTRE (NFAC), DELHI, PIN - 110001

- 2 INCOME TAX OFFICER
NC WARD 2(5), NON-CORPORATE RANGE, XVI/997, A-21,
2ND FLOOR, L. G. TOWERS, P.T. JACOB ROAD,
THOPPUMPADY, KOCHI, PIN - 682005

BY ADVS.
SRI.CHRISTOPHER ABRAHAM
SRI.P.R.AJITH KUMAR(K/000708/1998)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 10.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

Heard Ms.Nikitha Susan Paulson, learned counsel for the petitioner, and Sri.P.R.Ajithkumar, learned Standing Counsel for the Income Tax Department.

2. Challenge in this writ petition is the order dated 31.8.2023, Ext.P2, passed under Section 250 of the Income Tax Act, 1961 ('Act', for short) by the first respondent in an appeal filed against the assessment order dated 28.12.2017 under Section 143(3) of the Act. Learned counsel for the petitioner vehemently argues that even though the petitioner had given postal address of his counsel, it appears that neither his counsel nor the petitioner did receive notice of hearing of the appeal.

3. Assessment order is of the assessment year 2015-16. The assessment got completed on 28.12.2017 by the assessing officer. During the course of the assessment, it was observed that the petitioner had a cash deposit of Rs.1,24,25,000/-



in the savings bank accounts with the ICICI Bank (Rs.1,15,25,000/-) and Canara Bank (Rs.9,00,000/-). Out of the aforesaid amount, since the petitioner/assessee failed to prove source for Rs.53,03,000/-, the said amount was added as income of the petitioner/assessee. Aggrieved by the said order, the petitioner filed appeal. E-mail address of the Chartered Accountant of the petitioner and phone number of the petitioner were given, which are available/reflected in the portal. The argument of the learned counsel for the petitioner that the petitioner did not receive intimation regarding hearing of the appeal is liable to be rejected, inasmuch as under the system followed, every notice is not only uploaded in the portal, but also sent by the Department through the e-mail address given by the assessee with real time SMS alert in the mobile number provided by the assessee. These are automated system without any humanitarian efforts. Therefore, I find no substance in the submission of the learned counsel for the petitioner that the petitioner did not



receive intimation/notice regarding hearing of the appeal. The present writ petition is dismissed, as there has been no substance.

4. However, it will be open to the petitioner to take recourse to the remedy available under the statute before the Income Tax Appellate Tribunal against the impugned appellate order. If the petitioner files appeal before the ITAT within a period of three weeks, the ITAT shall consider the appeal and take a decision expeditiously, in accordance with law, without going into the question of limitation.

With the aforesaid observations, the present writ petition is dismissed.

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

sd/-
DINESH KUMAR SINGH
JUDGE



APPENDIX OF WP (C) 35663/2023

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE FORM 35 APPEAL FILED BY THE PETITIONER
- Exhibit P2 A TRUE COPY OF THE ORDER DATED 31.08.2023 BEARING DIN & ORDER NO. ITBA/ NFAC/S/250/2023-24/1055633791(1) ISSUED BY RESPONDENT NO. 1
- Exhibit P3 A TRUE COPY OF THE SCREENSHOT OF THE INCOME TAX PORTAL OF THE PETITIONER
- Exhibit P4 A TRUE COPY OF THE DEMAND NOTICE DATED 16.10.2023 BEARING DIN NO. ITBA/COM/F/17/2023-24/1057074299(1)