

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON**

**WEDNESDAY, THE 5TH DAY OF NOVEMBER 2014/14TH KARTHIKA, 1936**

**WP(C).No. 28582 of 2014 (W)**  
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**PETITIONER:**  
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**SHRI THOMAS MUTHOOT,  
MUTHOOT HOUSE, KOZHENCHERRY,  
PATHANAMTHITTA DISTRICT, PIN-689641.**

**BY SRI.T.M.SREEDHARAN (SENIOR ADVOCATE)  
ADVS. SRI.V.P.NARAYANAN  
SMT.DIVYA RAVINDRAN**

**RESPONDENT(S):**  
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- 1. THE ASSISTANT COMMISSIONER OF INCOME TAX,  
CIRCLE-1, ENNIKATTIL ESTATE,  
NEAR K.S.R.T.C. BUS STATION, THIRUVALLA-689657.**
- 2. THE ASSISTANT REGISTRAR,  
INCOME TAX APPELLATE TRIBUNAL,  
COCHIN BENCH, IST FLOOR, (BLOCK C-1 & C-11),  
KENDRIYA BHAVAN, OPP.CSEZ,  
KAKKANAD, COCHIN-682037.**

**BY SRI.JOSE JOSEPH, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 05-11-2014, ALONG WITH WPC. 28583/2014, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:**

**mbr/**

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1:- TRUE COPY OF ASSESSMENT ORDER AND DEMAND NOTICE DATED 27/12/2011 FOR THE ASSESSMENT YEAR 2005-06 PASSED BY THE FIRST RESPONDENT.
- P1(A):- TRUE COPY OF -DO-FOR THE ASSESSMENT YEAR 2006-07 PASSED BY THE FIRST RESPONDENT.
- P1(B):- TRUE COPY OF -DO-FOR THE ASSESSMENT YEAR 2007-08 PASSED BY THE FIRST RESPONDENT.
- P2:- TRUE COPY OF COMMON ORDER DATED 28/8/2014 IN ITA NOS . 83 TO 85/COCH/2014 PASSED BY THE 2ND RESPONDENT.
- P3:- TRUE COPY OF MISCELLANEOUS PETITION DATED 13/9/2014 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- P4:- TRUE COPY OF THE CERTIFICATE DATED 26/2/2014 ISSUED BY THE CHARTERED ACCOUNTANT OF THE PETITIONER.
- P5:- TRUE COPY OF THE ORDER NO TVD TO 1734F/AE/13-14 DATED 31/3/2014 ISSUED BY THE DY. COMMISSIONER OF INCOME TAX (TDS)KOTTAYAM FOR AY 2005-06.
- P6:- TRUE COPY OF THE ORDER NO TVD TO 1734F/AE/13-14 DATED 31/3/2014 ISSUED BY THE DY. COMMISSIONER OF INCOME TAX (TDS)KOTTAYAM FOR AY-2006-07.
- P7:- TRUE COPY OF THE ORDER NO TVD TO 1734F/AE/13-14 DATED 31/3/2014 ISSUED BY THE DY. COMMISSIONER OF INCOME TAX (TDS)KOTTAYAM FOR AY-2007-08.
- P8:- TRUE COPY OF THE ORDER NO TVLA/C-I/ABNPT4694B/2014-15 DATED 23/9/2014 ISSUED BY THE DY. COMMISSIONER OF INCOME TAX, THIRUVALLA.

RESPONDENT(S)' EXHIBITS:

/TRUE COPY/

P.A. TO JUDGE

mbr/

**P.R. RAMACHANDRA MENON, J.**

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**W.P.(C) Nos.28582 & 28583 of 2014**  
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**Dated this the 5<sup>th</sup> day of November, 2014.**

**JUDGMENT**

The petitioners have approached this Court seeking for a direction to be issued to the 2<sup>nd</sup> respondent to consider and pass appropriate orders on Ext.P3 petition filed under Section 254(2) of the Income Tax Act, mainly pointing out that the contention raised by the petitioner/assessee particularly in paragraph 12 of the written submissions of the note submitted before the said respondent has not been considered and as such, there is an error apparent on the face of the record, to be acted upon by this Court.

2. The case of the petitioner is that, the assessment was finalised as per Ext.P1 series orders for the different assessment years 2005-2006, 2006-2007 and 2007-2008. On challenging the same by filing appeals, interference was declined and the appeals were dismissed as per Ext.P2 order dated 28.08.2014 passed by the 2<sup>nd</sup> respondent. Since the vital points raised by the petitioner has been stated as omitted to be considered, Ext.P3 application

for rectification has been filed under Section 254(2) of the Income Tax Act and has approached this Court by filing this writ petition against the coercive proceedings taken in the meanwhile.

3. Heard the learned Senior Counsel Sri. T.M Sreedharan , appearing for the petitioner, as well as the learned Standing Counsel appearing for the respondents as well.

4. The learned Senior Counsel appearing for the petitioner submits that, by virtue of the amendment of the statute, invoking the second proviso 2 of Section 40a(ia), the rigour of the provision as to effect of non-deduction of tax payable has been virtually watered down. It is stated that, the assessment was finalised in the case of the petitioner, disallowing the claim for interest paid by the petitioner to the sister concern, in connection with the borrowal of money in the course of transactions. It is stated that, the sister concern of the petitioner has already satisfied the entire tax and in the said circumstances, proceedings have been finalised in respect of the sister concern, as borne by Exts.P5 to P7 orders passed by the Deputy Commissioner of Income Tax(TDS) for the concerned assessment

years. This being the position, there is absolutely no rhyme or reason to have proceeded against the petitioner and hence this writ petition, to cause Ext.P3 to be considered and disposed of. The learned counsel also points out that, the 2<sup>nd</sup> respondent has relied on the decision rendered by the Calcutta High Court as well as the Gujarat High Court, without any regard to the law declared by the Allahabad High Court. Referring to the decision rendered by the Madras Bench of the concerned Tribunal in C.O. No.155 (Mds) of 2013 in ITA No.2076 of 2012, the learned Senior Counsel points out that, if two views are available, the one which is favourable to the assessee has to be adopted, in view of the law declared by the Apex Court as per the law declared in **(1973) 88 ITR 192 (SC) (Commissioner of Income Tax Vs. Vegetable Products Ltd.)** (which in turn has been followed by the Madras Bench of the Tribunal).

5. The learned Standing Counsel appearing for the respondents submits that, the idea and understanding of the petitioner is quite wrong and misconceived. It is stated that, all the points raised from the part of the assessee have been

considered as discernible from Ext.P2 order itself. The benefit of amendment watering down the rigour of Section 40a(ia) appeared in the statute book only by virtue of the amendment brought about with effect from 01.04.2013. The scope of the said provision has already been considered by the Division Bench of this Court as per the decision reported in **Prudential Logistics and Transports (2014 (364) ITR 689**. It has been categorically held by the Bench in the said decision, that the amendment brought about with effect from 01.04.2013 cannot come to the rescue of the assessee in respect of the assessment of the previous years. It is also pointed out that, the said decision rendered by this Court has been referred to by the 2<sup>nd</sup> respondent/Tribunal in Ext.P2 order. The Tribunal being bound by the verdict passed by the jurisdictional High Court, there is no error apparent on the face of the record. It is also pointed out that, the petition preferred by way of Ext.P3, stating that there is an error apparent on the face of the record, it is not labile to be entertained, as there is no error apparent on the face of the record at all. It is also brought to the notice of this Court that the

petitioner is still having a remedy by way of appeal, as provided under Section 260A of the Income Tax Act, if any substantial question of law is involved.

6. The learned Senior Counsel appearing for the petitioner submits that, the petitioner is ready and willing to pursue the said remedy and seeks for some breathing time by way of 'two weeks' to pursue such proceedings and seeks to intercept the coercive proceedings being taken in the meanwhile. The learned counsel also points out that, in respect of WP(C) No.28582 of 2014, the petitioner has already satisfied liability to an extent of 81% and in respect of the other case, the payment effected is to the tune of nearly 66%.

7. After hearing both the sides, this Court holds that the remedy available to the petitioner, if at all aggrieved, is by way of Section 260A of the Income Tax Act. It is open for the petitioner to pursue such remedy in accordance with law and subject to available or valid and sustainable grounds. So as to enable the petitioner to pursue such exercise, coercive proceedings against the petitioner shall be kept in abeyance for a

period of 'two weeks', on condition that the petitioner satisfies 1/3<sup>rd</sup> of the balance liability to be cleared in both the cases, which shall be effected within 'one week'.

Both the writ petitions are disposed of.

**P.R. RAMACHANDRA MENON,  
JUDGE**

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