IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 4TH DAY OF APRIL 2018 / 14TH CHAITHRA, 1940

WP(C).No. 9173 of 2018

PETITIONER(S)

M/S.ST. JOSEPH'S GRANITES
ACHENKKUNNU, VALAKKAVU, P.O.MULAYAM,
THRISSUR - 680 751,
REPRESENTED BY ITS MANAGING PARTNER, MR. JOSE K.FRANCIS.

BY ADVS.SRI.JOSEPH KODIANTHARA (SR.)
SRI.RAMESH CHERIAN JOHN

RESPONDENT(S)

1. THE ASSISTANT COMMISSIONER OF INCOME TAX
OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX, CIRCLE-2(1),
RANGE 2, AAYAKKAR BHAVAN, S.T.NAGAR,
THRISSUR - 680 001.

2. THE COMMISSIONER OF INCOME (APPEALS),
OFFICE OF THE COMMISSIONER OF INCOME (APPEALS),
AAYAKAKR BHAVAN, S.T.NAGAR,
THRISSUR - 680 001.
BAZAR BRANCH, THRISSUR.

R BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-04-2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 9173 of 2018 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	TRUE COPY OF THE FIR (WITHOUT ATTACHMENT) FILED ON 19.03.2014 BY THE CBI.
EXHIBIT P2	TRUE COPY OF THE RELEVANT PAGES OF THE FINAL REPORT FILED BY U/S.173 CR.PC ON COMPLETION OF INVESTIGATION.
EXHIBIT P3	TRUE COPY OF THE ORDER OF ASSESSMENT DT. 29.12.2016 PASSED BY THE 1ST RESPONDENT U/S 143(3) OF THE ACT.
EXHIBIT P4	TRUE COPY OF THE FORM OF APPEAL, STATEMENT OF FACTS AND GROUNDS OF APPEAL.
EXHIBIT P5	TRUE COPY OF THE STAY APPLICATION DATED 30.08.2017.
EXHIBIT P6	TRUE COPY OF JUDGMENT OF THIS HON'BLE COURT DT. 31.08.2017 IN W.P.C.NO. 28406 OF 2017.
EXHIBIT P7	TRUE COPY OF THE LETTER DT. 12.12.2017 ALONG WITH ANNEXURES MENTIONED THEREIN.
EXHIBIT P8	TRUE COPY OF COVERING LETTER DT. 15.01.2018 ACKNOWLEDGED BY THE OFFICE OF THE 2ND RESPONDENT ON 16.01.2018.
EXHIBIT P9	TRUE COPY OF THE WEALTH STATEMENT OF THE PARTNERS FOR THE YEAR ENDED 31.03.2017 FILED BEFORE THE 2ND RESPONDENT.
EXHIBIT P10	TRUE COPY OF AUDITED PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED 31.03.2017 FILED BEFORE THE 2ND RESPONDENT.
EXHIBIT P11	TRUE COPY OF THE ORDER DT.28.02.2018 PASSED BY THE 2ND RESPONDENT.
EXHIBIT P12	TRUE COPY OF THE CHALLAN DT. 31.07.2017 SHOWING REMITTANCE OF RS. 20,00,000/-.

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

VPS PS TO JUDGE

P.B.SURESH KUMAR, J.

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W.P.(C) No.9173 of 2018

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Dated this the 4th day of April, 2018

JUDGMENT

Petitioner is an assessee under the Income Tax Act (the Act) on the rolls of the first respondent. The assessment of the petitioner for the year 2014-'15 has been revised by the assessing officer invoking the powers under Section 143(3) of the Act. Ext.P3 is the order of assessment issued in respect of the petitioner for the year 2014-'15. The petitioner challenged Ext.P3 order of assessment in appeal before the second respondent. Ext.P4 is the appeal preferred by the petitioner in this regard. Ext.P5 is the application preferred by the petitioner for stay in Ext.P4 appeal. Ext.P5 application for stay has now been disposed of in terms of Ext.P11 order granting the petitioner the stay sought for, on condition that they shall pay 10% of the demand. Ext.P11 order is under challenge in this writ petition.

2. Heard the learned Senior Counsel for the petitioner as also the learned Standing Counsel for the respondents.

3. The specific case of the petitioner in the writ petition is that they are an assessee for the last so many years; that all throughout the petitioner has been filing true and correct returns of their income; that the self-assessment made by the petitioner has never been subjected to scrutiny at any point of time; that in relation to the returns filed by one of the sister concerns of the petitioner for the year 2011-’12, an officer of the department demanded bribe from the petitioner; that the matter was complained by the petitioner to the Central Bureau of Investigation and on the said complaint, the officer concerned is being prosecuted; that the returns submitted by the petitioner for the year 2014-’15 has been taken for scrutiny by the officers concerned to wreak vengeance on the petitioner for having lodged compliant against their colleague and that it is on

account of the very same reason, the assessment of the petitioner for the relevant year has been revised raising a huge demand.

4. As noted above, in terms of the impugned order, the petitioner has been granted the interim stay sought by them. Of course, they were imposed a condition that they shall pay 10% of the demand for enjoying the benefit of the stay. The question is whether the appellate authority is justified in imposing the aforesaid condition. The contention of the petitioner, as noted above, is that the returns filed by them have been taken for scrutiny maliciously with a view to fasten liability on them for having lodged a complaint against an officer of the department. It is brought to the notice of this Court in several cases that the files are selected for scrutiny with the aid of computers. Further, in terms of the impugned order, the petitioner is asked to pay a meagre portion of the demand. In the circumstances, I do not find any justification to entertain the writ petition challenging Ext.P11 order, in exercise of my discretionary jurisdiction under Article 226 of the

Constitution of India.

5. Having confronted with the said fact situation, the learned Senior Counsel prayed for indulgence of this Court to extend the time prescribed for payment of 10% of the demand made in terms of Ext.P11 order. In so far as the petitioner challenged Ext.P11 order in the writ petition and since the writ petition is not being entertained, I deem it appropriate to extend the time granted to the petitioner for payment of 10% of the demand in terms of the impugned order till 12.4.2018. Ordered accordingly.

The writ petition is disposed of as above.

Sd/-

P.B.SURESH KUMAR,
JUDGE

vps 26/3

/True Copy/

PS to Judge