

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

THURSDAY, THE 21ST DAY OF MAY 2020 / 31ST VAISAKHA, 1942

WP(C).No.10100 OF 2020(J)

PETITIONER/S:

ASHICK ABRAHAM
7C, ASSET KOTTARAM, MARADU P.O.ERNAKULAM-682 304.

BY ADV. SRI.C.K.KARUNAKARAN

RESPONDENT/S:

- 1 PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
C.R.BUILDING, I.S.PRESS ROAD, ERNAKULAM-682 018.
- 2 PRINCIPAL COMMISSIONER OF INCOME TAX,
PUBLIC LIBRARY BUILDING, LAL BAHADUR SASTHRI ROAD,
KOTTAYAM-686 001.
- 3 INCOME TAX OFFICER,
WARD (1), ARATTUKULAKKARA COMPLEX, OPP. MEDICAL
COLLEGE HOSPITAL, AN PURAM, ALAPUZHA-688 0111.

OTHER PRESENT:

SRI JOSE JOSEPH , SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.05.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 21st day of May 2020

Petitioner, an individual assessee of Income tax department and holder of a Permanent Account Number (PAN) Ext.P1 was subjected to assessment before he shifted his residence to Ernakulam from Alappuzha, But his PAN card of Ernakulam was issued on December 2019. Mr. C.K.Karunakaran learned counsel appearing on behalf of the petitioner submits that petitioner vide Exts.P3 and P4 addressed the request to the 3rd respondent Income Tax Officer Ward 1, Alappuzha for transfer of the assessment proceedings initiated under Section 148. However no action has been taken giving cause to approach this Court with a prayer to issue writ of mandamus for considering such request. He further submits that the distance between Ernakulam and Alappuzha is 60 Kilometeres and the convenience of the assessee has to be seen as the Income Tax Authorities at Ernakulam would have the jurisdiction to

take into consideration all the aspects as would be applicable or otherwise. In support of the aforementioned contention, he relies upon the provisions of sub section (1) of Section 124 of Income Tax Act.

2. Issue notice before admission. Sri. Joseph Jose accepts notice on behalf of Income Tax. He opposes the prayer for transfer by relying upon the provisions of sub section (3) of Section 124 of the Income Tax Act. In order to lay emphasis, he refers to the provisions of Sub section (a) of sub section 3, which specifies that no person shall be entitled to call in question the jurisdiction of an assessing officer if return under sub section (1) of Section 139 is filed, after expiry of one month from the date on which was served with a notice under sub section (1) Section 142 or sub section (2) of Section 143 or after the completion of the assessment whichever is earlier. Reference was also laid to sub section 4 which empowers the assessing officer to take a call on the jurisdiction in case assessee placed the aforementioned objection, and is not satisfied with the correctness of the

claim. He thus submits that the aforementioned prayer as sought for is not acceptable. Another reason for rejection of the writ petition is non disclosure of the fact that for the assessment year 2012-13 petitioner filed a return under Section 139 and an assessment order was passed under Section 146 (b). An appeal was preferred by the petitioner before the Commissioner of Income Tax under Section 246 A where demand were sought from the assessing officer pertaining to certain agriculture income. On receipt of the aforementioned report, the assessing officer issued a re-assessment notice pertaining to assessment year 2013-14 and 2014-15 under Section 148 of the Act. All these aforementioned particulars have intentionally withheld as there is a complete bar under sub section (3) and sub section (4) of Section of 124 and urges this Court for dismissal of this writ petition.

3. In rebuttal, learned Counsel for the petitioner draws the attention of this court the provisions of sub section 1 of section 148 of the Income Tax Act by submitting that the

proceedings under Section 148 are *pari meteria* to the proceedings under Section 139 and submits that there would not be any impediment for the 3rd respondent to take a call on the request, particularly Ext . P4.

4. I have heard the learned counsel for the parties.

5. For adjudication of the aforementioned controversy, it would be appropriate to extract the provisions of Sub Sections 1, 2 and 3 of Section 124 and as well as sub section 1 of Section 148, the same read as under.

124. Jurisdiction of Assessing Officers

“1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction -

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

2) *Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the [Principal Director General or] Director General or the [Principal Chief Commissioner or] Chief Commissioner or the [Principal Commissioner or] Commissioner; or where the question is one relating to areas within the jurisdiction of different [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners, by the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners concerned or, if they are not in agreement, by the Board or by such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, specify.*

(3) *No person shall be entitled to call in question the jurisdiction of an Assessing Officer -*

(a) *Where he has made a return [under sub-section (1) of section 115WD or] under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or [sub-section (2) of section 115WE or] sub-section (2) of section 143 or after the completion of*

the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under [sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144] to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;

(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.]

[148. Issue of notice where income has escaped assessment

[(1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, [* *] as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such*

other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:]

[Provided that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause

(ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.]

[Explanation. – For the removal of doubts, it is hereby declared that nothing contained in the first proviso of the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

6. On perusal of the aforementioned provisions, no doubt an assessee is prevented to dispute the question of jurisdiction of the assessing officer, after the expiry of one month from the date when he was served with a notice under sub section (1) of Section 142 or sub section (2) of Section 143, and in case such objection is raised the assessing officer shall assign reasons regarding the correctness or otherwise of the claim for referring the matter for determination under sub section (2) before the assessment is made. The question which has arisen in the present writ petition is whether the proceedings under Section 148 ie re assessment would be taken at par with the proceedings under Section 139.

7. on perusal of the provisions of Section 148 extracted supra, it is axiomatic that the proceedings initiated under Section 148 shall be proceedings at the stage of filing of the return under Section 139. There is no doubt that the petitioner did not disclose about the issuance of the reassessment notice dated 30.12.2019, pertaining to assessment year 2013-14 and 2014-15. However, this aforementioned contention of Mr.Navaneeth N.Nath was attempted to be refuted by Sri.C.K.Karunakaran in view of the fact that Sub Section (4) of Section 124 enjoins upon the assessing authority to assign a reason by recording a satisfaction for reference of determination as and when any question of jurisdiction is raised.

8. It is a question of fact that the petitioner though shifted his residence in the year 2015 from Alappuzha to Ernakulam and issuance of Pan card Ext.P1 in the year 2019 is a testimony of the same for the remaining assessment years of course in case of any dispute with income tax the jurisdiction would be vested with the Income Tax Authority,

Ernakulam.

9. I am of the view that all these points which have been urged before this Court can be conveniently taken and addressed by the authority, ie. the assessing officer under sub section (4) of Section 124 of the Income Tax Act 1961. For the sake of reputation, the assessing officer is required to record the satisfaction as per the provisions of sub section (2) before the assessment is made. It is a matter of record that the request Ext.P4 is dated 04.01.2020, ie within few days of receipt of the reassessment notice dated 30.12.02019 under Section 148 of the Income Tax Act.

10. Having considered the aforementioned provisions of the Act and the rival contentions, I am of the view that the equity can be addressed, by directing 3rd respondent to take a call on the request Ext.P6 under sub section (4) of Section 124 or any other provisions of the Act regarding the jurisdiction of assessment or reassessment proceedings, by taking into consideration observation, herein above and the relevant provisions of the Act. Let this exercise be under

taken within a period of one month from the receipt of a copy of this judgment after affording opportunity of hearing to the petitioner and by passing a speaking order. It is made clear that the 3rd respondent would take into consideration whether the claim made by the petitioner would or would not fall under sub section (2), when the original assessment 139 has been made or otherwise. It is further made clear that the proceedings may continue but shall not be finalised until and unless the request as envisaged under Ext.P6 within time frame afore-mentioned.

Sd/-

AMIT RAWAL

JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | TRUE COPY OF THE PAN CARD NO AACPE 5894 N OF THE PETITIONER |
| EXHIBIT P2 | TRUE COPY OF THE AADHAAR CARD NO 8771 6171 7265 OF THE PETITIONER |
| EXHIBIT P3 | TRUE COPY OF PETITIONERS LETTER DATED 30.12.2019 ADDRESSED TO THE ITO NON CORPORATE WARD (1) ERNAKULAM |
| EXHIBIT P4 | TRUE COPY OF LETTER DATED 4.1.2020 ADDRESSED TO THE 3RD RESPONDENT |
| EXHIBIT P5 | TRUE COPY OF THE LETTER DATED 25.2.2020 COPIED TO THE 1ST RESPONDENT |
| EXHIBIT P6 | TRUE COPY OF THE LETTER DATED 25.2.2020 ADDRESSED TO THE 2ND RESPONDENT |