

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 01ST DAY OF JULY 2020 / 10TH ASHADHA, 1942

WP(C).No.13048 OF 2020(E)

PETITIONER/S:

M.M.SHAJAHAN
FLAT NO.12B, HEERA INFOCITY, KUZHIVILA POST,
THIRUVANANTHAPURAM-695 005.

BY ADVS.
SMT.NISHA JOHN
SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN
SRI.R.BHASKARA KRISHNAN

RESPONDENT/S:

- 1 THE PRINCIPAL COMMISSIONER OF INCOME TAX
AAYAKAR BHAWAN, KOWDIAR, THIRUVANANTHAPURAM-695 003.
- 2 THE INCOME TAX OFFICER
WARD-1(3), 5TH FLOOR, AAYAKAR BHAVAN, KOWDIAR,
THIRUVANANTHAPURAM-695 003.

OTHER PRESENT:

SRI CHRISTOPHER ABRAHAM SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 1st day of July 2020

The petitioner has approached this Court seeking the following reliefs:

"i. To call for the records leading to the issues of Exts.P2 and P6 orders passed by the 1st respondent by rejecting the Revision Petition without adverting to the merits of the case and the orders Ext.P7 imposing penalty u/s 271(1)(c) and the order Ext.P8 issued u/s 154(4) and quash the same by the issue of Writ of Certiorari or any other appropriate Writ order or direction.

ii. To issue of a Writ of Mandamus or any other appropriate Writ, order or direction, directing the respondents to refrain from enforcing the illegal Assessment Order Ext.P1 and the demand pursuant thereto and the order imposing penalty vide Ext.P7 and the revised order Ext.P8 issued un/s 154(4), pending disposal of W.P.(C).

iii. To stay all proceedings for recovery of the demand pursuant to the Assessment Order Ext.P1, Penalty order Ext.P7 and the revised order un/s 154(4) as per Ext.P8, for the Assessment Year 2009-10, pending disposal of the Writ Petition (Civil)."

2. The facts leading to filing of the writ petition are that the petitioner was doing coir business and running a Petrol Pump in Thiruvananthapuram. A return of income for the Assessment Year 2009-10 on 5.3.2011, declaring total

income at Rs.1,80,780/- was filed. The Income tax of Rs.3,790/- was also remitted as per the return. The 2nd respondent issued a notice under Section 148 of the Act on 6.6.2013 by observing that the assessee seem to have not filed the return of income for the assessment year. The cash deposited in the Bank accounts are reflected in the cash book ,ledger and are also subjected to audit of accounts at the close of the year. However, without affording an opportunity and without issuing preassessment notice, the 2nd respondent completed the assessment ex-parte u/s 144 estimating the income of Rs.2,11,12,903/- and raised a demand of Rs.1,21,54,240/- vide Ext.P1 dated 11.3.2015. The petitioner being unaware of the remedy of appeal, the Chartered Accountant advised a Revision Petition, which was acknowledged on 2.2.2016.

3. Learned counsel appearing on behalf of the petitioner submits that the revision petition was posted for hearing on 17.3.2017. The order was passed by the 1st respondent under Section 264, it is observed that the petitioner was given an opportunity to be heard on 10.3.2017. But the petitioner could not appear due to

reasons beyond control. Against the rejection order of revision petition the petitioner approached this Court vide W.P.(C) No.23492 of 2017, which was disposed vide order 17.7.2017 and the petitioner was directed to appear before the Officer on 22.8.2017, on which date, the date of hearing shall be communicated and the matter shall be concluded subject to the condition of payment of cost of Rs.10,000/-.

4. Pursuant to the above judgment, the petitioner submitted a representation on 17.10.2017 with reference to the judgment and also remitted Rs.10,000/- as directed by this Hon'ble Court. The 1st respondent issued a notice dated 17.11.2017 to appear before the 1st respondent on 23.11.2017 for hearing as evidenced by Ext.P5. The aforementioned revision petition was dismissed vide order dated 24.11.2017, Ext.P6. Perusal of the order would also demonstrate that the 1st respondent did not even refer to these grounds before attributing frivolous conduct to the part of the petitioner. In fact the order suffer from palpable error as one of the bank accounts in South Indian Bank bearing No. 0273053000003369 did not belong to the petitioner. Therefore the addition of Rs.1,27,13,782/- is totally without

any application of mind. The addition of entire credit in the bank account has been noticed without considering the withdrawal from the bank account. In fact assessee was hospitalized for more than two months due to illness and was disabled to take remedial steps. Transactions in the bank accounts pertaining to the two business is totally different. Petitioner is also saddled with the demand of income tax of Rs.1,48,65,180/- as evidenced from rectification order dated 31.3.2018 issued under Section 154(4) of the Act and imposition of penalty under Section 271(1)(c) of the Act as evidenced from Exts.P7 and P8 and urging this Court for setting aside the order.

5. Learned counsel for the respondent raises the objection qua maintainability of petition to be belated , also qua availability of the remedy ought to have been availed within the prescribed period of limitation.

6. I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions. The entire focus of the pleadings reflects challenge to the impugned order Ext.P6 dated 24.11.2017 issued under Section 264 of the Act but no

explanation has come forth as to how and in what manner delay occurred in laying challenge by filing an appeal before the Commissioner of Appeals. There could have been a force in the argument had the impugned order not disclosed the compliance of principle of natural justice or apparently appeared to be not only illegal but without jurisdiction. It is settled law that in such circumstances, the doors of this Court under Article 226 of the Constitution of India by exercising the power of review are always open. However, in the instant case, for the sake of repetiton just to circumvent the procedure of appeal, which prima facie is time barred; writ petition in the year 2020 has been filed. This Court cannot assume a role of an appellate court and examine the veracity and legality of an order of assessment on merits.

As an upshot of findings, I do not find any illegality and the writ petition is devoid of merits and is accordingly dismissed.

Sd/-

AMIT RAWAL

JUDGE

sab

APPENDIX**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE ASSESSMENT ORDER DATED 11.3.2015 PASSED BY THE 2ND RESPONDENT ALONG WITH THE DEMAND NOTICE.
- EXHIBIT P2 TRUE COPY OF THE REVISION ORDER C.NO.413/J/RP-12/2015-16 DATED 30.3.2017 ISSUED U/S 264 BY THE 1ST RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE JUDGMENT DATED 17.7.2017 IN WPC NO.23492 OF 2017 OF THIS HON'BLE COURT.
- EXHIBIT P4 TRUE COPY OF THE REPRESENTATION DATED 17.10.2017 SUBMITTED BY THE PETITIONER BEFORE THE COMMISSIONER OF INCOME TAX, THIRUVANANTHAPURAM.
- EXHIBIT P5 TRUE COPY OF THE NOTICE C.NO.413/J/PR-12/2015-16 DATED 17.11.2017 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P6 TRUE COPY OF THE ODER C.NO.413/JUDL/RP-12/264/2017-18 DATED 24.11.2017 ISSUED U/S 264 BY THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE PENALTY ORDER DATED 23.9.2015 ISSUED U/S 271(1)(C) BY THE 2ND RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE REVISED OFDER ISSUED, U/S 154(4) DATED 31.3.2018 BY THE 2ND RESPONDENT.