

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 22ND DAY OF NOVEMBER 2021 / 1ST AGRAHAYANA, 1943

WP(C) NO. 21524 OF 2021

PETITIONER:

SREE NARAYANA DHARMA SABHA
SREYAS,
MADAVANA P.O,
KODUNGALLUR-680666,
THRISSUR DISTRICT,
REPRESENTED BY ITS SECRETARY
SUJA K.V.
BY ADVS.
JOSEPH MARKOSE (SR.)
ABRAHAM JOSEPH MARKOS
ISAAC THOMAS
ALEXANDER JOSEPH MARKOS
SHARAD JOSEPH KODANTHARA

RESPONDENTS:

- 1 THE ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF INCOME TAX
INCOME TAX OFFICER,
NATIONAL E-ASSESSMENT CENTRE,
NEW DELHI-110001.
- 2 THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
NATIONAL E-ASSESSMENT CENTRE,
NEW DELHI-110001.
- 3 INCOME TAX OFFICER
EXEMPTION WARD, THRISSUR-680666.
- 4 THE PRINCIPAL COMMISSIONER OF INCOME TAX
KOCHI-682018.

ADV. CHRISTOPHER ABRAHAM -SC,
ADV. JOSEPH MARKOSE SR.- P

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J

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W.P.(C) No.21524 of 2021

Dated this the 22nd day of November, 2021

JUDGMENT

Petitioner is a charitable society registered under Section 12A of the Income Tax Act, 1961 [for short, the Act]. For the assessment year 2015-2016 and 2016-2017, petitioner filed its return showing 'Nil' income, claiming that the entire income was applied for charitable purposes. However, the assessments were reopened under Section 148 of the Act. Petitioner submits that subsequently it was informed that the assessments will be completed under the Faceless Assessment scheme, and that notices will be issued from the said authority.

2. For the assessment year 2015-2016, petitioner was served with show cause notice dated 20.09.2021 asking the petitioner to respond by 23.59 hours on 21.09.2021. On 22.09.2021, Ext.P10 assessment order was issued after observing that assessee had not responded even by

22.09.2021.

3. For the assessment year 2016-2017, assessee was issued with a show cause notice dated 17.09.2021 asking it to respond by 20.09.2021. On 22.09.2021, Ext.P18 assessment order was issued after observing that assessee was aware of the proceedings all along.
4. The assessment orders Ext.P10 and Ext.P18 are under challenge on the ground of violation of principles of natural justice.
5. I have heard the arguments of Adv. Joseph Markos, learned Senior counsel on behalf of the petitioner as well as Adv. Christopher Abraham, the learned Standing counsel for the respondents.
6. It is curious to note that the assessing officer proceeded to assess the assessee by the orders impugned in this case when they failed to respond within 48 hours of serving the show cause notice. It is elementary that every order must be rendered only after granting a reasonable opportunity for responding as well as hearing. The grant of a reasonable opportunity to file a response

is an element of the cherished principle of natural justice.

7. Consideration of the objections raised by an assessee is the platform from which the rights and obligations of the assessee depends. Therefore, unless sufficient opportunity is granted to the assessee to respond which is mandated by the explicit provisions of Section 144(B) (1)(xxii) of the Act, the assessee will be put to prejudice.
8. It is clear from the circumstances that have transpired in the instant case, from the time of show cause notice till the date of assessment, for both the assessment years, that the show cause notices failed to provide sufficient opportunity to the petitioner to respond. The violation of principles of natural justice in the orders impugned is manifest.
9. Accordingly the orders of assessment produced as Ext.P10 and Ext.P18 dated 22.09.2021 shall stand set aside and the 1st respondent is directed to pass fresh orders of assessment after granting a reasonable opportunity of being heard after granting it sufficient

time to file an objection to the petition to show cause notice. The objections, if any, to the show cause notices shall be filed by the petitioner within a period of 15 days from the date of receipt of a copy of this judgment and the assessing authority shall thereafter, fix a date for hearing of the petitioner. Since this Court has, by this judgment set aside Exts.P10 & P18 assessment orders, the consequential notices of penalty issued as Exts.P19 & P20 shall also stand set aside.

The writ petition is allowed as above.

Sd/-
BECHU KURIAN THOMAS,
JUDGE

APPENDIX OF WP(C) 21524/2021

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE ORDER DATED 28/05/2021 IN WPC NO11540 OF 2021 PASSED BY THIS HON'BLE COURT.
Exhibit P2	TRUE COPY OF THE JUDGMENT DATED 10.05.2021 IN WPC NO.5234 OF 2021 PASSED BY THE DELHI HIGH COURT.
Exhibit P3	TRUE COPY OF THE SECTION 148 NOTICE DATED 12.03.2020 FOR AY 2015-16.
Exhibit P3(a)	TRUE COPY OF THE SECTION 148 NOTICE DATED 12.03.2020 FOR AY 2016-17.
Exhibit P4	TRUE COPY OF NOTICE UNDER SECTION 142(1) DATED 06.10.2010.
Exhibit P5	TRUE COPY OF NOTICE UNDER SECTION 143(2) DATED 23.02.2021.
Exhibit P6	TRUE COPY OF PAGE 1 OF THE PETITIONER'S RESPONSE DATED 27/02/2021 TO EXT.P5. NOTICE.
Exhibit P7	TRUE COPY OF NOTICE UNDER SECTION 142(1) DATED 31.08.2021.
Exhibit P8	TRUE COPY OF PAGE 1 OF THE PETITIONER'S RESPONSE DATED 02.09.2021 TO EXT.P7 NOTICE.
Exhibit P9	TRUE COPY OF SHOW CAUSE NOTICE ORDER DATED 20.09.2021 ISSUED BY THE 1ST RESPONDENT.
Exhibit P10	TRUE COPY OF THE ASSESSMENT ORDER DATED 22.09.2021 ALONG WITH DEMAND NOTICE AND COMPUTATION FOR ASSESSMENT YEAR 2015-16.
Exhibit P11	TRUE COPY OF NOTICE UNDER SECTION 142(1) DATED 06.10.2020 FOR ASSESSMENT YEAR 2016-17.
Exhibit P12	TRUE COPY OF NOTICE UNDER SECTION 143(2) DATED 22.02.2021 FOR ASSESSMENT YEAR 2016-17.
Exhibit P13	TRUE COPY OF THE PETITIONER'S RESPONSE DATED 09.03.2021 TO EXT.P12 BY E-FILING THE REQUIRED DOCUMENTS.
Exhibit P14	TRUE COPY OF NOTICE UNDER SECTION 142(1) DATED 31.08.2021.
Exhibit P15	TRUE COPY OF PAGE 1 OF THE PETITIONER'S RESPONSE DATED 02.09.2021 TO EXT.P14 NOTICE.
Exhibit P16	TRUE COPY OF THE SHOW CAUSE NOTICE DATED 17.09.2021 PERTAINING TO ASSESSMENT YEAR 2016-17.
Exhibit P17	TRUE COPY OF THE PETITIONER'S REQUEST DATED 20.09.2021.
Exhibit P18	TRUE COPY OF THE ASSESSMENT ORDER DATED 22.09.2021 FR AY 2016-17.
Exhibit P19	TRUE COPY OF THE PENALTY NOTICE ISSUED UNDER SECTION 274 READ WITH SECTION 271(1)(C) DATED 22.09.2021 FOR AY 2015-16.
Exhibit P20	TRUE COPY OF THE PENALTY NOTICE ISSUED UNDER SECTION 274 READ WITH SECTION 271(1)(C) DATED 22.09.2021 FOR AY 2016-17.
Exhibit P21	TRUE COPY OF THE JUDGMENT REPORTED IN 1994 KLJ TAX CASES 24 : MS JEWELLERY VS ASSISTANT COMMISSIONER (ASSESSMENT).

RESPONDENTS EXHIBITS :

TRUE COPY