

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 6<sup>TH</sup> DAY OF DECEMBER 2021 / 15TH AGRAHAYANA, 1943

WP(C) NO. 11389 OF 2021

PETITIONER:

CORPUS CHRISTI EDUCATIONAL SOCIETY  
KALATHIPADI, VADAVATHOOR P.O.,  
KOTTAYAM-686010,  
REPRESENTED BY ITS ADDITIONAL SECRETARY  
MS.MARY ROY.

BY ADVS.

SRI.JOSEPH MARKOSE (SR.)  
SRI.V.ABRAHAM MARKOS  
SRI.ABRAHAM JOSEPH MARKOS  
SRI.ISAAC THOMAS  
SRI.ALEXANDER JOSEPH MARKOS  
SRI.SHARAD JOSEPH KODANTHARA

RESPONDENTS:

- 1 THE ADDITIONAL/JOINT/DEPUTY/ASSISTANT  
COMMISSIONER OF 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,  
KOTTAYAM-686001.
- 4 THE PRINCIPAL COMMISSIONER OF INCOME TAX,  
THIRUVANANTHAPURAM-695001.
- 5 PRINCIPAL COMMISSIONER OF INCOME TAX,  
PUBLIC LIBRARY BUILDING,

W.P.(C) No.11389/21

-:2:-

KOTTAYAM-686001.

BY ADVS.

P.K.RAVINDRANATHA MENON (SR.)

ADV.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 06.12.2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**BECHU KURIAN THOMAS, J.**

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**W.P.(C) No.11389 of 2021**  
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Dated this the 6<sup>th</sup> day of December, 2021

**JUDGMENT**

Petitioner impugns the order of assessment issued under section 143(3) of the Income Tax Act, 1961 (for short, 'the Act'). Consequential penalty notice issued under section 274 of the Act is also assailed in this writ petition.

2. The limited challenge raised in this writ petition, for invoking the jurisdiction under Article 226, is the alleged violation of the principles of natural justice. According to the petitioner, the order of assessment has been issued without serving the show-cause notice and the draft assessment order, as contemplated under section 144B(1)(xvi)(b) of the Act.

3. The e-Assessment Scheme was brought in by notification of 2019. The said scheme was subsequently renamed as 'Faceless Assessment Scheme'. With effect from 01.04.2021, the notification found its way into the statute book in the form of section 144B. The scheme of Faceless Assessment under the aforesaid section is that after reckoning the relevant material available on record, obtained pursuant to notices

issued under the provisions, a draft assessment order is prepared, either accepting the income as per the return submitted by the assessee or by making a variation to the income so returned, and a copy of the draft assessment order is forwarded to the National Faceless Assessment Centre (for short, 'the Centre'). Thereafter the Centre will examine the draft assessment and finalise the same, in case no variation, prejudicial to the interests of the assessee is proposed. However, if any variation, prejudicial to the interests of the assessee is proposed, then notice shall be served upon the assessee calling upon him to show-cause as to why a variation should not be made.

4. The above scheme of statutory provision is incorporated with a purpose and is a facet of the principle of natural justice incorporated into the statute.

5. Learned counsel for the petitioner contends that, when respondents issued Ext.P11 order of assessment, they acted, contrary to section 144B, since, when a variation to the return of income submitted by the petitioner was carried out, the same was made without issuing the draft assessment order or show-cause notice.

6. A perusal of the documents produced by the petitioner including the return filed for the assessment year 2018-19 shows the petitioner had submitted a return with "Nil" income and claimed exemption pursuant to

Ext.P2 order under section 10 of the Act. However, subsequently notices under section 142 of the Act were issued, for which the petitioner had filed a detailed reply, and it was thereafter that, the order under Section 143(3) was issued by the 1<sup>st</sup> respondent on 08.04.2021. A reading of the assessment order shows that, the assessing officer had varied the return filed by the petitioner and demanded an income tax of Rs.2,73,46,529/-, after noticing the failure of the assessee in filing an audit report physically. This disentitled the assessee from claiming exemption under section 10(23C) of the Act. It is clear that there is a variation from the return filed by the petitioner.

7. The provisions of section 144B, as mentioned earlier, requires the draft assessment order and the show-cause notice to be furnished to the assessee, eliciting his explanation. The impugned order of assessment has varied the alleged return filed by the petitioner. Since the mandate of the statute has been clearly infringed upon the assessment order falls foul of the principles of natural justice and hence is liable to be set aside. The decisions of the Delhi High Court in **DJ Surfactants v. National E-Assessment Centre, Income Tax Department, New Delhi and Others** [2021 (437) ITR 519 (Delhi)] and that in **RMSI Private Limited v. National E-Assessment Centre, Delhi** [(2021 (436) ITR 612 (Delhi))] in this context are relevant.

8. Accordingly, Ext.P11 order of assessment is set aside. Consequently, Ext.P14 penalty order shall also stand set aside. Having regard to the circumstances of the case, the competent among the respondents shall serve the draft assessment order along with a show-cause notice to the petitioner, as expeditiously as possible, in a time bound manner and complete the proceedings in accordance with law, without further delay.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS  
JUDGE**

vps

APPENDIX OF WP(C) 11389/2021

PETITIONER'S/S' EXHIBITS

EXHIBIT P1	TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 15.6.1976 ISSUED BY THE REGISTRAR OF SOCIETIES
EXHIBIT P2	TRUE COPY OF THE ORDER DATED 13.2.2007 ISSUED BY THE 4TH RESPONDENT
EXHIBIT P3	TRUE COPY OF RETURN ACKNOWLEDGEMENT FO AY 2018-19
EXHIBIT P4	TRUE COPY OF THE INTIMATION DATED 10.5.2019 ISSUED TO THE PETITIONER
EXHIBIT P5	TRUE COPY OF THE NOTICE DATED 23.9.2019 ISSUED TO THE PETITIONER
EXHIBIT P6	TRUE COPY OF THE NOTICE DATED 15.10.2020 ISSUED TO THE PETITIONER
EXHIBIT P7	TRUE COPY OF THE NOTICE DATED 18.12.2020 ISSUED TO THE PETITIONER
EXHIBIT P8	TRUE COPY OF THE PETITIONERS RESPONSE DATED 1.1.2021
EXHIBIT P9	TRUE COPY OF THE NOTICE DATED 4.2.2021 ISSUED TO THE PETITIONER
EXHIBIT P10	TRUE COPY OF THE PETITIONERS RESPONSE DATED 20.2.2021
EXHIBIT P11	TRUE COPY OF THE ASSESSMENT ORDER DATED 8.4.2021
EXHIBIT P12	TRUE COPY OF THE CIRCULAR DATED 3.11.2020 ISSUED BY THE CBDT
EXHIBIT P13	TRUE COPY OF THE INTERIM ORDER DATED 16.4.2021 IN WPC NO 4774 OF 2021 PASSED BY THE DELHI HIGH COURT
EXHIBIT P14	TRUE COPY OF THE NOTICE DATED 8.4.2021 ISSUED BY THE 1ST RESPONDENT