

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 4<sup>TH</sup> DAY OF JULY 2022 / 13TH ASHADHA, 1944

WA NO. 814 OF 2022

WP(C) 19803/2022 OF HIGH COURT OF KERALA

**APPELLANT/S:**

K.A.RAUF,  
AGED 64 YEARS  
"SHELTER", JAYANTHI NAGAR HOUSING COLONY, P.T.  
USHA ROAD, KOZHIKODE  
BY ADVS.  
HARISANKAR V. MENON  
MEERA V.MENON

**RESPONDENT/S:**

- 1 THE ASSISTANT COMMISSIONER OF INCOME TAX  
CENTRAL CIRCLE-2, AAYAKAR BHAVAN (NORTH BLOCK),  
KOZHIKODE - 673 001.
- 2 THE ASST. COMMISSIONER OF INCOME TAX,  
CIRCLE 1 (1), AYAKAR BHAVAN,  
KOZHIKODE - 673 001.
- 3 THE PRINCIPAL COMMISSIONER OF INCOME TAX,  
AAYAKAR BHAVAN, KOZHIKODE - 673 001.
- 4 THE DY. COMMISSIONER OF INCOME TAX,  
CENTRAL CIRCLE - 2, KOZHIKODE - 673 001.

ADV.JOSE JOSEPH, SC INCOME TAX

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
04.07.2022,ALONG WITH WA.815 & 816/2022. THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE S.V.BHATTI**

**&**

**THE HONOURABLE MR.JUSTICE BASANT BALAJI**

**MONDAY, THE 4<sup>TH</sup> DAY OF JULY 2022 / 13TH ASHADHA, 1944**

**WA NO. 815 OF 2022**

**WP(C) 19910/2022 OF HIGH COURT OF KERALA**

**APPELLANT/S:**

K.A.RAUF,  
AGED 64 YEARS  
"SHELTER", JAYANTHI NAGAR HOUSING COLONY, P.T.  
USHA ROAD, KOZHIKODE.  
BY ADVS.HARISANKAR V. MENON  
MEERA V.MENON  
K.KRISHNA  
SREEJITH R.NAIR

**RESPONDENT/S:**

- 1 THE ASST. COMMISSIONER OF INCOME TAX,  
CENTRAL CIRCLE-2, AAYAKAR BHAVAN (NORTH BLOCK),  
KOZHIKODE - 673 001.
- 2 THE ASST. COMMISSIONER OF INCOME TAX,  
CIRCLE 1 (1), AYAKAR BHAVAN, KOZHIKODE - 673 001.
- 3 THE PRINCIPAL COMMISSIONER OF INCOME TAX,  
AAYAKAR BHAVAN, KOZHIKODE - 673 001.
- 4 THE DY. COMMISSIONER OF INCOME TAX,  
CENTRAL CIRCLE - 2, KOZHIKODE - 673 001.

ADV.JOSE JOSEPH, SC INCOME TAX

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
04.07.2022, ALONG WITH WA.814 & 816/2022. THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE S.V.BHATTI**

**&**

**THE HONOURABLE MR.JUSTICE BASANT BALAJI**

**MONDAY, THE 4<sup>TH</sup> DAY OF JULY 2022 / 13TH ASHADHA, 1944**

**WA NO. 816 OF 2022**

**WP(C) 19804/2022 OF HIGH COURT OF KERALA**

**APPELLANT/S:**

K A RAUF, AGED 64 YEARS  
"SHELTER", JAYANTHI NAGAR HOUSING COLONY, P.T.  
USHA ROAD, KOZHIKODE.  
BY ADVS.HARISANKAR V. MENON  
MEERA V.MENON  
K.KRISHNA

**RESPONDENT/S:**

- 1 THE ASSISTANT COMMISSIONER OF INCOME TAX,  
CENTRAL CIRCLE-2, AAYAKAR BHAVAN (NORTH BLOCK),  
KOZHIKODE - 673 001.
- 2 THE ASST. COMMISSIONER OF INCOME TAX,  
CIRCLE 1 (1), AYAKAR BHAVAN, KOZHIKODE - 673 001.
- 3 THE PRINCIPAL COMMISSIONER OF INCOME TAX,  
AAYAKAR BHAVAN, KOZHIKODE - 673 001.
- 4 THE DY. COMMISSIONER OF INCOME TAX,  
CENTRAL CIRCLE - 2, KOZHIKODE - 673 001.

ADV.JOSE JOSEPH, SC INCOME TAX

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
04.07.2022, ALONG WITH WA.814 & 815/2022. THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:

**S.V.BHATTI  
& BASANT BALAJI, JJ.**

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WRIT APPEAL Nos.814, 815 & 816 of 2022  
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JUDGMENT

(Dated this the 4<sup>th</sup> day of July, 2022)

Basant Balaji J.,

The appellant in W.A.Nos.814, 815 and 816 of 2022 is the common petitioner in W.P.(C.) Nos.19803, 19910 and 19804 of 2022 respectively. The appellant challenges the order of the assessments for the years 2009-2010, 2007-2008 and 2008-2009 respectively.

2. The assessment orders were challenged before the first appellate authority. The first appellate authority allowed the appeals and the revenue took up the matter before the Tribunal. The Tribunal remanded the matter for

fresh consideration to the assessing authority. Thereafter, the appellant filed W.P.(C) No.25978 of 2020 when the assessing authority proceeded to pass assessment without giving the appellant an opportunity of cross examine a particular witness. This court, by judgment dated 25.11.2020, quashed the assessment order and directed the Assistant Commissioner of Income Tax Circle - I(1) to pass fresh orders after affording an opportunity to cross examine.

3. The order of the Tribunal remanding the matter to the Assessment Authority was challenged before this court by filing I.T.Appeal No.55 of 2018 and connected cases. Those appeals were dismissed by order dated 10.3.2022. The appellants challenged Ext.P15 Order of the Deputy Commissioner of Income Tax, Circle -2, Kozhikode,

wherein the application filed seeking 7 days time to cross examine one Mr.U K Mohan Raj was declined and the order dated 30.12.2019 from the Assistant Commissioner of Income Tax was confirmed.

4. The counsel for the appellant submits that this court by judgment in W.P.(C) No.978 of 2020, ordered to pass fresh orders within a period of three months from the date of receipt of the judgment. The second respondent issued summons dated 10.2.2021 under Section 131 Income Tax Act for personal attendance for cross examination. He replied on 11.2.2021, seeking adjournment of cross examination along with the medical certificate. He also submitted that he is not able to travel to Kerala as his residence is in Karnataka and the examination may be conducted by video conferencing or personal examination

at his residence in Karnataka. Thereafter, the 2<sup>nd</sup> respondent issued another letter on 18.2.2021 to the appellant to cross-examine the said person through video conference on 3.3.2021. On 22.2.2021, a letter was issued on behalf of the appellant by M/s.Raghunath Associates that the physical appearance of Sri.Mohan Raj is highly essential and cross examination through video conferencing will not be effective and prayed for time till Sri.Mohan Raj is capable of undertaking travel to Calicut. Another letter was issued on 26.2.2021 to the appellant to enquire as to whether the appellant is ready to cross-examine Sri.Mohan Raj on 1.3.2021 and if no intimation is received, it will be deemed that he has forfeited his right to cross-examination and assessment orders will be passed accordingly. On 1.3.2021 the appellant requested for some more time for

cross-examination and prayed that at least 7 days time may be granted. The 3<sup>rd</sup> respondent, by the impugned order, rejected the said request and confirmed the assessment order dated 30.12.2019.

5. Ext.P15 is an appealable order. The counsel for the appellant submitted that the learned Single Judge has failed to note that though the judgment in W.P.(C) No. 25978 of 2020 was delivered on 25.11.2020, the first notice following the judgment was issued to the appellant only during the month of February 2021 and the appellant hurriedly completed the assessment as the time limit fixed by this court was to expire on 7.3.2021.

6. The learned Single Judge dismissed the Writ Petition holding that the appellant may file appeal against the assessment orders in question raising the contention that

he was denied the opportunity to cross examine the witness as directed by this court. On going through the impugned order Ext.P15, as well as the judgment of the learned Single Judge, we are of the firm opinion that since the appellant has got statutory remedy by way of an appeal, the learned Single Judge was right in refusing to invoke the writ jurisdiction under Article 226 of the Constitution of India. We do not find any ground to interfere with the judgment of the learned Single Judge as the appellant has an alternative and efficacious remedy by way of an appeal.

In the result, these Writ Appeals stand dismissed.

**sd/- S.V.BHATTI, JUDGE**

**sd/- BASANT BALAJI, JUDGE**

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