IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 5TH DAY OF DECEMBER 2023 / 14TH AGRAHAYANA, 1945

WP(C) NO. 9679 OF 2022

PETITIONER:

ASHRAF HASSAN,
AGED 69 YEARS, SON OF HASSAN,
PERMANENT RESIDENCE AT NARAGATH KANDAATHIL,
MASTER COACHING BOARD ROAD, OPPOSITE JLN STADIUM,
KALOOR, KOCHI, ERNAKULAM-682017.

BY ADVS.
SRI. K. P. PRADEEP
SRI. HAREESH M. R.
SRI. SANAND RAMAKRISHNAN
SMT. RASMI NAIR T.
SRI. T. T. BIJU
SMT. T. THASMI
SMT. M. J. ANOOPA

RESPONDENTS:

1 THE CENTRAL BOARD OF DIRECT TAXES,
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI-110001,
REPRESENTED BY ITS CHAIRMAN.

2 PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
KERALA REGION, MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
CENTRAL REVENUE BUILDINGS, I S PRESS ROAD,
KOCHI, ERNAKULAM-682018.

3 TAX RECOVERY OFFICER,
INCOME TAX, KANDOMKULATHY TOWERS, INCOME TAX OFFICE,
OPP. MAHARAJAS COLLEGE GROUND, M.G.ROAD,
KOCHI, ERNAKULAM-682011.

4 TAX RECOVERY OFFICER,
TRO CENTRAL, KOCHI, INCOME TAX , KANDOMKULATHY TOWERS,
INCOME TAX OFFICE, OPP. MAHARAJAS COLLEGE GROUND,
M. G. ROAD, KOCHI, ERNAKULAM-682011.

BY ADV. SRI. NAVANEETH M. NATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DINESH KUMAR SINGH, J.

W.P.(C) No.9679 of 2022

Dated this the 5th day of December, 2023

JUDGMENT

1. petitioner is a Non Resident Indian living in United Arab Emirates has filed this writ petition impugning Exhibits P-4 and P-5 notices issued by the 3rd and 4th respondents respectively for collection of income tax due to him to the extent of Rs. 28,56,391/-. This Court vide the interim order dated 22.03.2022 considering the submissions of the learned Standing Counsel notices, assessment orders etc., served on the petitioner/his representative. The petitioner was directed to appear before the Tax Recovery Officer pursuance to Exhibit P-7 notice, personally or through his representative on the date fixed. In pursuance to the direction given by this Court, the petitioner had appeared before the Tax Recovery Officer and the petitioner had been handed over the copy of the assessment orders as well as penalty orders passed under Section 144 read with Section 147 of the Income Tax Act, 1961 dated 23.12.2019 as well as the penalty order dated 09.11.2020 in respect of the assessment year 2014-15. The petitioner's property has been

attached, however, the sale of the immovable property has not been effected as this Court has stayed the sale proceedings.

2. The learned Counsel for the petitioner submits that the brother of the petitioner had already filed appeal against the assessment order and penalty order which is pending before the Commissioner of Appeals; CIT (Appeals) – III.

3. Mr. Naveeth R. Nath, the learned Counsel for the Revenue submits that the petitioner has not challenged the assessment order and the penalty order. The petitioner has statutory remedy of appeal to challenge those orders before the Appellate Authority under the provisions of Income Tax Act, 1961. He further submits that this Court may stay the sale of the immovable property of the petitioner till disposal of the stay application by the Appellate Authority.

4. Considering the fair suggestion of the learned Counsel for the Revenue, the present writ petition is disposed of with liberty to the petitioner to file appeal before the Appellate Authority under the provisions of the Income Tax Act, 1961 against the assessment order and the penalty order along with the application for condonation of delay and application for stay. Petitioner may file the appeal and all

the applications within a period of three weeks from today. The Appellate Authority shall provide the link to the petitioner for uploading the appeal and the applications. Till the decision taken on the application for condonation of delay and stay, further proceedings for sale of the immovable properties which has been attached by the impugned notices shall take place.

Sd/-
DINESH KUMAR SINGH
JUDGE

Svn

APPENDIX OF WP(C) 9679/2022

PETITIONER'S EXHIBITS

EXHIBIT P1	TRUE COPY OF THE SALE DEED NO.732/93 DATED 15.2.1993 OF SRO, ERNAKULAM
EXHIBIT P2	TRUE COPY OF THE SALE DEED NO.756/93 DATED 16.2.1993 OF SRO, ERNAKULAM
EXHIBIT P3	TRUE COPY OF THE RELEVANT PAGES OF PASSPORT NO.Z3793237 DATED 19.2.2017 ISSUED AT DUBAI
EXHIBIT P4	TRUE SCANNED COPY OF THE NOTICE NO.ITBA/RCV/S/301/2021-22/1039531712 (1) DATED 8.2.2022, ISSUED BY THE 3RD RESPONDENT AS SEEN AT THE DOOR OF THE RESIDENCE OF THE PETITIONER
EXHIBIT P5	TRUE SCANNED COPY OF THE NOTICE NO.ITBA/COM/F/17/2021-22/10401711846(1) DATED 28.2.2022, ISSUED BY THE 4TH RESPONDENT AS SEEN AT THE DOOR OF THE RESIDENCE OF THE PETITIONER
EXHIBIT P6	TRUE COPY OF THE REPLY DATED 8.3.2022 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT
EXHIBIT P7	TRUE COPY OF THE SUMMONS DATED 18.3.2022 NO.ITBA/COM/F/17/2021-22/1041005275(1) ISSUED BY THE 4TH RESPONDENT
EXHIBIT P8	TRUE COPY OF THE ASSESSMENT ORDER DATED 23-12-2019 ISSUED BY THE ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE, KOTTAYAM
EXHIBIT P9	TRUE COPY OF THE PENALTY ORDER DATED 09-11-2020 ISSUED BY THE ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE, KOTTAYAM
EXHIBIT P10	TRUE COPY OF THE DEMAND NOTICE DATED 06-10-2022 ISSUED BY THE 4TH RESPONDENT
EXHIBIT P11	TRUE COPY OF THE DEMAND NOTICE DATED 29-11-2022 ISSUED BY THE 4TH RESPONDENT