



2023:KER:56998

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 25TH DAY OF SEPTEMBER 2023 / 3RD ASWINA, 1945

WP(C) NO. 28069 OF 2023

PETITIONER/S:

KOYAMBRATH PUTHIYAPURAYIL MOHAMMED KUNHIAGED 52
YEARS S/O KAMAL HAJI, NASEEMA MANZIL, PAVANNOORMOTTA,
MAYYIL, THALIPARAMBA, KANNUR, PIN - 670602

BY ADV S.ARUN RAJ

RESPONDENT/S:

- 1 THE INCOME TAX OFFICER, WARD-3, KANNURAAYAKAR BHAVAN,
KONNOTHUMCHAL, CHOYVA P.O, PIN - 670006
- 2 ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF
INCOME TAX/INCOME TAX OFFICER, ASSESSMENT UNIT, NATIONAL
E-ASSESSMENT CENTRE INCOME TAX DEPARTMENT, 2ND FLOOR, E-
RAMP, JAWAHARLAL NEHRU STADIUM, NEW DELHI, PIN - 110003
- 3 THE PRINCIPAL COMMISSIONER OF INCOME TAX AAYAKAR
BHAVAN, MANANCHIRA, KOZHIKODE, PIN - 673001

OTHER PRESENT:

CHRISTOPHER ABRAHAM-SC-IT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

Heard Mr S Arun Raj learned Counsel for the petitioner and Mr Christopher Abraham learned Standing Counsel for the Department.

2. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing Ext.P1 notice under Section 148A(b), consequential Ext.P2 order passed under Section 148A(d), and issuance of Ext.P3 notice under Section 148 of the Income Tax Act 1961 (for short, 'IT Act') issued by the 1st respondent.

3. The petitioner is a Non-Resident Indian working in Oman. The 1st respondent issued notice dated 19.03.2022 to the petitioner under Section 148A(b) of the IT Act for the Assessment Year 2018-19 informing the petitioner that the income of the petitioner chargeable to tax for the Assessment Year 2018-19 has escaped assessment for the reasons that the



petitioner had purchased immovable properties worth Rs.1 crore, Rs.70 lakhs, Rs.2 crore and also purchased a vehicle for Rs.69 lakhs. The petitioner had not filed returns of his income. Therefore, sources of cash utilised for purchasing the immovable properties and vehicles remained unexplained.

4. The case of the petitioner is that the petitioner was unaware of the issuance of Ext.P1 notice dated 19.03.2022 under Section 148A(b) of the IT Act. So, the petitioner could not respond to the above notice. The assessment order, in the absence of the petitioner's response, was finalised *ex parte* on 30.03.2022 under Section 148A(d) of the IT Act, holding that the petitioner had not filed returns of his income and the source of cash utilised for purchasing the immovable properties and vehicle remained unexplained.

4.1 The petitioner was also issued with notice dated 30.03.2022 under Section 148 of the IT Act. The petitioner



submitted that the petitioner was unaware of the issuance of the Ext.P2 order under Section 148A(d) and Ext.P3 notice under Section 148 of the IT Act. In the meantime, on 26.03.2023, the assessment order under Section 147, read with Sections 144 and 144B of the IT Act, was passed, making an addition of Rs.4,39,00,000/-.

4.2 Learned Counsel for the petitioner submits that the petitioner would confine his argument regarding violation of statutory prescription of seven days' notice under Clause (b) of Section 148A of the IT Act. The said notice Ext.P1 is dated 19.03.2022 and the petitioner was granted time for uploading the reply to the said show cause notice on the e-portal of the Department up to 24.03.2022.

4.3 Learned Counsel for the petitioner submits that Section 148A lays down certain conditions for passing an order under Section 148. Section 148A provides for conducting the



inquiry, providing an opportunity before issuing notice under Section 148. Those steps are to be adhered to. Otherwise, notice under Section 148 would be rendered illegal. Sub-clause (b) of Section 148A specifically provides that show cause notice has to be served to the petitioner by providing an opportunity to be heard within the time not less than seven days and not exceeding thirty days from the date on which such notice is issued.

4.4 In the present case, admittedly, only four days' time was granted to the petitioner to reply to the show cause notice under Section 148A(b) of the IT Act. Learned Counsel for the petitioner therefore submits that since the mandatory provision of a minimum of seven days' time was not adhered to by the 1st respondent, subsequent proceedings have got vitiated.

4.5 Learned Counsel for the petitioner has placed



reliance on the judgment of this Court in *Hosdurg Beedi Workers Industrial Service Type co-operative Society Ltd v. The Income Tax Officer, Kasaragod*¹. This Court had quashed the assessment order under the same circumstances where the minimum time of seven days was not provided in a notice issued under Section 148A(b). In the said case, the notice was dated 18.03.2022, and time was granted till 24.03.2022 for filing the reply to the show cause notice and hearing. This Court held that five days' time granted in the show cause notice for filing a reply was against the statutory mandate under Section 148A(b).

5. Mr Christopher Abraham learned Standing Counsel for the Department does not dispute the fact that seven days' time was not granted to the assessee for filing the reply to the notice under Section 148A(b) inasmuch as the notice dated

¹ Judgment dated 23.08.2023 in WPC 13984/2023



19.03.2022 and the assessee was granted time only up to 24.03.2022.

6. In view thereof, the present writ petition is allowed. Ext.P1 notice, Ext.P2 order, P3 notice and Ext.P4 assessment order are quashed. Respondents are directed to issue a fresh notice under Section 148A(b), giving seven days or more time to the petitioner, but not more than thirty days' time as prescribed under Section 148A(b) for filing the reply and hearing. After considering the reply, the respondents may proceed in accordance with the law.

sd/-

DINESH KUMAR SINGH

JUDGE

jjj



APPENDIX OF WP(C) 28069/2023

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE NOTICE DATED 19-3-2022 ISSUED UNDER SECTION 148A (B) OF THE IT ACT FOR THE AY 2018-19 BY THE 1ST RESPONDENT
- Exhibit P2 A TRUE COPY OF THE ORDER DATED 30-3-2022 ISSUED BY THE 1ST RESPONDENT U/S 148A (D) OF THE ACT FOR THE AY 2018-19
- Exhibit P3 A TRUE COPY OF THE NOTICE DATED 30-3-2022 OF THE 1ST RESPONDENT U/S 148 OF THE ACT FOR THE AY 2018-19
- Exhibit P4 A TRUE COPY OF THE ASSESSMENT ORDER DATED 26-3-2023 PASSED U/S 147 R.W.S 144 AND 144B OF THE ACT BY THE 2ND RESPONDENT FOR THE AY 2018-19
- Exhibit P5 A TRUE COPY OF THE NOTICE DATED 14-11-2023 ISSUED BY THE 2ND RESPONDENT
- Exhibit P6 A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 7-3-2023 UNDER SECTION 144 OF THE ACT GENERATED BY THE 2ND RESPONDENT
- Exhibit P7 A TRUE COPY OF THE JUDGMENT DATED 12-5-2022 IN WP(C) NO. 7385 OF 2022 PASSED BY THE HIGH COURT OF DELHI
- Exhibit P8 A TRUE COPY OF THE JUDGMENT DATED 20-9-2022 IN WRIT PETITION NO. 2154 OF 2022 PASSED BY THE HIGH COURT OF MUMBAI