



2023:KER:84206

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 21ST DAY OF DECEMBER 2023 / 30TH AGRAHAYANA, 1945

WP(C) NO. 12654 OF 2023

PETITIONER:

P.M.ABDUL NAZEER,
AGED 59 YEARS
S/O LATE KUNHABDULLA, RESIDING AT FIELD HOUSE,
KUTTIADI, KOZHIKODE-673 508.
BY ADVS.
M.P.SHAMEEM AHAMED
AKHIL PHILIP MANITHOTTIYIL

RESPONDENT:

THE ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE 1, KOZHIKODE, AAYAKAR BHAVAN, NORTH
BLOCK, NEW ANNEX BLDG., MANANCHIRA, KOZHIKODE -673001.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Dated this the 21st day of December, 2023

The present writ petition has been filed for quashing of Exts. P5 to P11 penalty orders dated 31.03.2023 passed by the respondent against the petitioner in respect of the assessment years 2008-09 to 2014-15 under Sections 271(1)(c) and 271AAB of the Income Tax Act, 1961. The assessment order in respect of the assessment year 2008-09 to 2014-15 were passed on 31.03.2016 and for penalty proceedings show cause notices were issued under Section 271(1)(c) for the assessment years 2008-09 to 2013-14 and for the assessment year 2014-15, notice under Section 271AAB was issued. The petitioner-assessee had filed reply to the said show cause notices. The petitioner had filed appeals against the said assessment orders before the CIT(A). During the pendency of the appeals before the CIT(A), the penalty proceedings were kept in



abeyance. The CIT (A) has vide common order dated 02.12.2021 dismissed the appeals affirming the assessment orders. Since as the appeals got dismissed, the penalty proceedings revived and the petitioner was issued with notices on 27.03.2023. Aggrieved by the order passed the CIT(A), the petitioner has approached the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal had modified the assessment orders and remanded the matter to the assessing officer vide Ext.P1 order for passing a fresh assessment order. The learned counsel for the petitioner submits that on remand, fresh assessment order can be passed and in view of the fresh assessment orders passed, the penalty orders may be revised.

2. The learned Standing Counsel for the Income Tax Department does not dispute this fact that in light of the fresh assessment orders passed on remand, the penalty orders have to be revised.



Thus, considering the aforesaid fact and the stand of the learned counsel for the Income Tax Department as well as the submission advanced on behalf of the learned counsel for the petitioner, the present writ petition is disposed of, with a direction to the respondent to revise the penalty orders in light of the fresh/revised assessment orders passed in respect of the assessment year 2008-09 to 2014-15 on remand. The petitioner should be afforded an opportunity of hearing as provided under Section 75(1)A before revising the penalty orders. Needless to mention that the Assessing Officer shall expedite the proceedings for revising the penalty orders, preferably within a period of one month.

Sd/-
DINESH KUMAR SINGH
JUDGE

**APPENDIX OF WP(C) 12654/2023**

PETITIONER EXHIBITS

- EXHIBIT P-1 COPY THE ORDER DATED 28.10.2022 ISSUED BY THE INCOME TAX APPELLATE TRIBUNAL
- EXHIBIT P-2 COPY OF THE NOTICE NO. ITBA/PNL/F/271(1) (C)/2022-23/1051419183(1) DATED 27.02.2023, ISSUED BY THE RESPONDENT, FOR THE ASSESSMENT YEARS 2008-09 TO 2013-14
- EXHIBIT P-3 COPY OF THE NOTICE NO. ITBA /PNL/F/271AAB(1) /2022-23/ 1051418785 (1) DATED 27.02.2023, ISSUED BY THE RESPONDENT, FOR THE ASSESSMENT YEAR 2014-15
- EXHIBIT P-4 COPY OF THE EMAIL DATED 30.03.2023 SENT BY THE RESPONDENT TO THE PETITIONER'S CHARTERED ACCOUNT
- EXHIBIT P-5 COPY OF THE PENALTY ORDER ALONG WITH THE COMPUTATION SHEET DATED 31.03.2023 FOR THE ASSESSMENT YEAR 2008-09 UNDER SECTION 271 (1) (C) OF THE ACT
- EXHIBIT P-6 COPY OF THE PENALTY ORDER ALONG WITH THE COMPUTATION SHEET DATED 31.03.2023 FOR THE ASSESSMENT YEAR 2009-10 UNDER SECTION 271 (1) (C) OF THE ACT
- EXHIBIT P-7 COPY OF THE PENALTY ORDER ALONG WITH THE COMPUTATION SHEET DATED 31.03.2023 FOR THE ASSESSMENT YEAR 2010-11 UNDER SECTION 271 (1) (C) OF THE ACT
- EXHIBIT P-8 COPY OF THE PENALTY ORDER ALONG WITH THE COMPUTATION SHEET DATED 31.03.2023 FOR THE ASSESSMENT YEAR 2011-12 UNDER SECTION 271 (1) (C) OF THE ACT
- EXHIBIT P-9 COPY OF THE PENALTY ORDER ALONG WITH THE COMPUTATION SHEET DATED 31.03.2023 FOR THE ASSESSMENT YEAR 2012-13 UNDER SECTION 271 (1) (C) OF THE ACT
- EXHIBIT P-10 COPY OF THE PENALTY ORDER ALONG WITH THE COMPUTATION SHEET DATED 31.03.2023 FOR THE ASSESSMENT YEAR 2013-14 UNDER SECTION 271 (1) (C) ACT
- EXHIBIT P-11 COPY OF THE PENALTY ORDER ALONG WITH THE COMPUTATION SHEET DATED 31.03.2023 FOR THE ASSESSMENT YEAR 2014-15 UNDER SECTION 271 AAB OF THE ACT



RESPONDENT ANNEXURES

ANNEXURE R(A)

TRUE COPY OF THE RELEVANT SCREEN SHOT.

ANNEXURE R(B)

TRUE COPY OF THE RELEVANT WHATSAPP SCREEN SHOT.

