

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 29TH DAY OF NOVEMBER 2023 / 8TH AGRAHAYANA, 1945

WP(C) NO. 13727 OF 2023

PETITIONER:

VAZHAKKULAM BLOCK RURAL CO-OPERATIVE SOCIETY LTD.,
NO.E-1082
PONJASSERY P.O., VENGOLA, PERUMBAVOOR,
ERNAKULAM - 683 547
REPRESENTED BY ITS SECRETARY JYOTHIMOL E.J.

BY ADV PREMJIT NAGENDRAN

RESPONDENT:

THE INCOME TAX OFFICER WARD-2,
OFFICE OF THE THE INCOME TAX OFFICER WARD-2,
ALUVA -683 101.

BY ADV CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
29.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DINESH KUMAR SINGH, J.

WP(C) NO. 13727 OF 2023

Dated this the 29th day of November, 2023

J U D G M E N T

1. The present writ petition has been filed impugning the Ext.P5 order under Section 148 A(b) and Ext.P6 Notice under Section 148 of the Income Tax Act.

2. Admittedly, before passing the impugned Ext.P5 order, personal hearing was not afforded to the petitioner. The issue is covered by the judgment of this Court in the case of ***Asamannoor Service Co-operative Bank Ltd. Vs. the Income Tax Officer*** in WP (C) No. 12595 of 2023 dated 17.10.2023.

3. After considering the language under

Section 148 A(b), paragraph 6 & 7 of the judgment of this Court held as under.

“6. Heading of Section 148A itself provides conducting of enquiry, providing opportunity before issuance of notice under Section 148. Section 148A(b) reads as under:

“Provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than 7 days and but not exceeding 30 days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice u/s 148 should not be issued on the basis of information which suggests that income dischargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any as per clause (a)”

7. Section 148A(b) begins with “provide an opportunity of being heard to the assessee”. Hearing does not mean filing reply to the show cause notice. If the provision of this Section contemplates opportunity of being heard that has to be construed as personal hearing. Therefore, I

do not find substance in the submission of learned Standing Counsel that an opportunity of being heard to the assessee contemplated under Section 148A(b) does not necessarily mean personal hearing. In my view, opportunity of being heard means an opportunity of personal hearing to the assessee.”

4. In view thereof, I find Ext.P5 order and Ext.P6 notice are unsustainable. Therefore, the same are set aside and the petitioner is directed to appear before the respondent on 12.12.2023 with all the relevant documents in his possession. On his appearance, the petitioner shall be afforded an opportunity of being heard. After considering the submission of the assessee, the assessing officer should proceed to pass a fresh order, and thereafter, proceed with the notice under Section 148 of the Income Tax Act. It is made clear that, if the petitioner does not appear on 12.12.2023, no

further opportunity shall be granted to the petitioner for hearing.

5. With the aforesaid direction, the present writ petition stands finally disposed of.

**Sd/-
DINESH KUMAR SINGH
JUDGE**

rpr

APPENDIX OF WP(C) 13727/2023

PETITIONER'S EXHIBITS

- Exhibit P-1 NOTICE NO. ITBA/COM/F/17/2022-23/1049901475(1) DATED 19.02.23 ISSUED BY THE RESPONDENT.
- Exhibit P-2 A TRUE COPY OF THE REPLY OF THE PETITIONER DATED 27.02.2023.
- Exhibit P-3 A TRUE COPY OF NOTICE NO. ITBA/AST/F/148A(SCN)/ 2022-23/1050469509 (1) DATED 06.03.2023 ISSUED BY THE RESPONDENT.
- Exhibit P-4 A TRUE COPY OF THE REPLY OF THE PETITIONER DATED 13.03.2023.
- Exhibit P-5 A TRUE COPY OF THE ORDER UNDER SECTION 148A(D)NO. ITBA/AST/F/148A/2022-23/1051473638(1) DATED 28.03.2023 ISSUED BY THE RESPONDENT.
- Exhibit P-6 A TRUE COPY OF THE NOTICE UNDER SECTION 148 NO. ITBA/AST/S/148 1/2022-23/1051494222 (1) DATED 28.03.2023 ISSUED BY THE RESPONDENT.
- ExhibitP-7 TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN W.P.(C) 12595.2023 DATED 10.04.2023.

RESPONDENT'S EXHIBITS

- Exhibit R1(a) Copy of judgment of the Supreme Court in the case of Anshul Jain v Principal Commissioner of Income Tax and Another 449 ITR 256 (SC).
- Exhibit R1 (b) Copy of judgment of the Punjab and Haryana High Court in the case of Anshul Jain v Principal Commissioner of Income Tax and Another 449 ITR 251 (P and H).
- Exhibit R1(c) Copy of the Judgment of the Kerala High Court in W.P.(C) No. 37527 of 2022 dated 07.12.2022 in the case of M/s Viswabharathi Medicals v Income Tax Officer.