



2024/KER/41076

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 10TH DAY OF JUNE 2024 / 20TH JYAISHTA, 1946

WP(C) NO. 15949 OF 2024

PETITIONER:

LAKESHORE HOSPITAL AND RESEARCH CENTRE LIMITED,
XVI MARADU, NHY 47, BYE PASS,
NETTOOR P.O, KOCHI - 682040,
REPRESENTED BY ITS COMPANY SECRETARY,
MR. MURALEEDHARAN R.

BY ADVS.
ABRAHAM JOSEPH MARKOS
ISAAC THOMAS
ALEXANDER JOSEPH MARKOS
SHARAD JOSEPH KODANTHARA
JOHN VITHAYATHIL

RESPONDENTS:

- 1 THE ADDITIONAL/JOINT/DEPUTY/ASSISTANT
COMMISSIONER OF INCOME TAX/ INCOME TAX OFFICER,
NATIONAL FACELESS ASSESSMENT CENTRE,
NEW DELHI - 110 001.
- 2 THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
NATIONAL FACELESS ASSESSMENT CENTRE,
NEW DELHI - 110 001.
- 3 THE DEPUTY COMMISSIONER INCOME TAX,
CORPORATE CIRCLE 1(1),
KOCHI - 682 018.

SRI. JOSE JOSEPH - SC, INCOME TAX DEPARTMENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 10.06.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner Company is running a hospital by name 'Lakeshore Hospital' and was an assessee under the Income Tax Act, 1961 (for short, 'the Act') on the files of the 3rd respondent. After the introduction of the Faceless Assessment Scheme, the petitioner is an assessee on the files of the 1st respondent. The e-mail address of the Chief Financial Officer (CFO), the Principal Officer, was provided to the Income Tax Department by the petitioner for official communication.

2. The petitioner's assessment for the assessment year (AY) 2022 - 2023 was processed under Section 143(1) of the Act and selected under 'CASS' category for complete scrutiny. The petitioner was issued Ext.P1 notice under Section 143(2) of the Act. The petitioner submitted Ext.P2 reply to Ext.P1. Thereafter, the petitioner was



issued with Ext.P3 notice under Section 142(1) of the Act along with a questionnaire to which the petitioner submitted Ext.P4 reply dated 17.11.2023 providing necessary details.

3. The petitioner states that, before Ext.P4 reply was filed, the CFO of the Company had resigned with effect from 15.11.2023. The 1st respondent had issued two notices dated 15.12.2023 and 23.02.2024 under Section 142(1) of the Act to the e-mail id of the CFO which was not accessible to the Company and therefore, could not be responded. Thereafter, Ext.P5 show cause notice under Section 144 of the Act was issued to the petitioner by the 1st respondent which was followed by Ext.P6 show cause notice proposing to add 10% of the amount claimed in the returns as 'other expenses'. These notices were also sent to the e-mail address of the former CFO which was not



accessible to the Company and therefore, the petitioner was not aware and could not respond. The opportunity to file submissions online was closed on 18.03.2024.

4. The petitioner states that since the petitioner did not receive any notice pursuant to Ext.P4 reply, they were under the impression that the matter was no longer being proceeded with. While so, the 1st respondent has completed the assessment under Section 143(3) of the Act as per Ext.P7 order dated 21.03.2024. Ext.P8 is the notice of demand issued under Section 156 of the Act, pursuant to Ext.P7. It is only on receipt of Ext.P7 assessment order that the petitioner realised that the earlier notices had been received at the e-mail address of the former CFO which is now defunct. The petitioner states that they have meticulously complied with all income tax



assessment requirements in the past and the omission to reply to Exts.P5 and P6 notices was because of the reason that the petitioner did not receive those notices since they were sent to the e-mail address of the former Principal Officer which was not accessible to the Company and that there was no intention to conceal their income or to furnish any inaccurate particulars. It is stated that the omission to reply to Exts.P5 and P6 notices was only inadvertent and bonafide. The petitioner submits that there was lack of opportunity to respond to the show cause notices and the 1st respondent has made an ad-hoc disallowance mulcting the petitioner with the liability of addition of 10% of the expenses claimed under 'other expenditure'. The petitioner has, therefore, filed this writ petition challenging Ext.P7 assessment order and Ext.P8 notice of demand contending,



inter alia, that they have been issued in violation of the principles of natural justice.

5. A statement has been filed on behalf of the respondents, wherein, it is stated that the averment made by the petitioner that the notices were served to the e-mail address of ex-principal officer is not correct and that the e-mail id provided by the assessee in the e-filing portal is cfo@lakeshorehospital.org which is the organizational e-mail id of the petitioner and all correspondences were made to the same including the final show cause notice. Ext.P4 reply dated 17.11.2023 of the petitioner after the resignation of the Company's CFO was also filed through this email id. Since it is admitted that the error was committed by the assessee, the petitioner cannot contend that there is violation of the principles of natural justice. It is further stated that, in addition to service of notices



through e-mail, all notices were shared through e-filing portal, which is accessible to the auditors of the assessee.

6. Heard Sri.Joseph Markos, the learned Senior Counsel for the petitioner and Sri.Jose Joseph, the learned Standing Counsel for the Income Tax Department.

7. It is contended by the learned Standing Counsel that the writ petition is not maintainable as there are no exceptional circumstances warranting interference of this Court under Article 226 of the Constitution of India. It is submitted that the petitioner has got an efficacious alternate remedy by way of an appeal under Section 246A of the Act against the orders impugned and that it is the duty of the assessee to comply with the statutory requirements like updating the e-mail id. Sri.Jose relies on the decision of the Hon'ble Supreme Court



in Principal Commissioner of Income-Tax v. I-Ven Interactive Limited [(2019) 418 ITR 662 (SC)]. Paragraphs 6 and 7 thereof read as follows:-

“6. We have heard the learned counsel for the respective parties at length.

6.1 At the outset, it is required to be noted that notice under Section 143(2) of the 1961 Act was sent by the Assessing Officer to the assessee at the address as mentioned in the PAN database on October 5, 2007 and the same was within the time limit prescribed in proviso to Section 143(2) of the 1961 Act. However, it was the case on behalf of the assessee that the said notice was not served upon the assessee as the assessee changed its name and address and shifted to new address prior thereto and therefore the said notice was not served upon the assessee and by the time when subsequently the notices were served upon the assessee, notice under Section 143(2) of the 1961 Act was barred by the period prescribed in proviso to Section 143(2) of the 1961 Act and therefore the assessment order is bad in law. It was the case on behalf of the assessee that vide communication dated December 6, 2005 the assessee intimated to the Assessing Officer about the new address and despite the same the Assessing Officer sent the notice at the old address. However, it is required to be noted that the alleged communication dated December 6, 2005 is not forthcoming. Neither the same was produced before the Assessing Officer nor even the same has been produced before this Court. In the affidavit also, filed in compliance with order dated 21.08.2019, the assessee has stated that the alleged communication dated December 6, 2005 is not available. Thus, the assessee has failed to prove the alleged communication dated December 6, 2005. The only document available is Form No.18 filed with the Registrar of Companies. Filing of Form-18 with the Registrar of Companies cannot be said to be an intimation to the Assessing Officer with respect to intimation of change in address. It appears that no application was made by the assessee to change the address in the PAN data base and in the PAN database the old address continued. Therefore, in absence of any intimation to the Assessing Officer with respect to change in address, the Assessing Officer was justified in issuing the notice at the address available as per the PAN database. Therefore, the Assessing Officer cannot be said to have committed any error and in fact the Assessing Officer was justified in sending the notice at the address as



per the PAN database. If that is so, the notice dated October 5, 2007 can be said to be within the period prescribed in proviso to Section 143(2) of the 1961 Act. Once the notice is issued within the period prescribed as per the proviso to Section 143(2) of the Act, the same can be said to be sufficient compliance of Section 143(2) of the 1961 Act. Once the notice is sent within the period prescribed in the proviso to Section 143(2) of the 1961 Act, in that case, the actual service of the notice upon the assessee thereafter would be immaterial. In a given case, it may happen that though the notice is sent within the period prescribed, the assessee may avoid actual service of the notice till the period prescribed expired. Even in the relied upon case by the learned Senior Advocate for the assessee in the case of Hotel Blue Moon (supra), it is observed that the Assessing Officer must necessarily issue notice under Section 143(2) of the 1961 Act within the time prescribed in the proviso to Section 143(2) of the 1961 Act. Therefore, in the facts and circumstances of the case, the High Court is not justified in dismissing the appeal and confirming the orders passed by the learned Commissioner of Income Tax (Appeals) and the Income-Tax Appellate Tribunal setting aside the assessment order solely on the ground that the assessment order is bad in law on the ground that subsequent service of notice upon the assessee under Section 143(2) of the 1961 Act was beyond the time prescribed in the proviso to Section 143(2) of the 1961 Act.”

7. Now so far as the observations made by the High Court while concurring with the view of the learned Tribunal that merely by filing of return of income with the new address, it shall be enough for the assessee to discharge its legal responsibility for observing proper procedural steps as per the Companies Act and the Income Tax Act is concerned, we are of the opinion that mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In absence of any specific intimation to the Assessing Officer with respect to change in address and/or change in the name of the assessee, the Assessing Officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly when the return has been filed under E-Module scheme. It is required to be noted that notices under Section 143(2) of the 1961 Act are issued on selection of case generated under automated system of the Department which picks up the address of the assessee from the database of the PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office and the same has to be intimated to the



Registrar of Companies in the prescribed format (Form 18) and after completing with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessee is also required to make an application for change of address in the departmental database of PAN, which in the present case the assessee has failed to do so.

8. Admittedly, Exts.P5 and P6 show cause notices were sent to the e-mail address provided by the petitioner to the Department for official communication. The case of the petitioner is that due to inadvertent error on their part in not updating/changing the e-mail address with the Department, the show cause notices were unnoticed and unattended by them on time. The petitioner contends that there was lack of opportunity to respond to the show cause notices which is violative of the principles of natural justice and against the scheme of assessment under Section 143(3) read with Section 144B of the Act for Faceless Assessment Scheme which provides for



opportunity to the assessee to rebut the allegations in the show cause notices.

9. This Court is to refrain from intervening with cases where there is an effective alternate remedy, unless there exists compelling reasons to do so. The Hon'ble Supreme Court in **Assistant Commissioner of State Tax v. Commercial Steel Ltd.** [2021 KHC 7037 : 2021 (5) KLT OnLine 1142] has held that a writ petition can be entertained in exceptional circumstances where there is;

- i) a breach of fundamental rights;
- ii) a violation of the principles of natural justice;
- iii) an excess of jurisdiction; or
- iv) a challenge to the vires of the statute or delegated legislation.

10. The petitioner contends that there was



lack of opportunity to respond to the show cause notices which is violative of the principles of natural justice. Exts.P5 and P6 show cause notices were sent to the e-mail address provided by the petitioner to the Department for official communication. It is the case of the petitioner that, due to inadvertent error on their part in not updating/changing the e-mail address with the Department, the show cause notices were unnoticed and could not be responded to, on time. Therefore, when the petitioner is at fault, as they did not update/ change the e-mail address with the Department, they cannot legitimately complain that there is violation of the principles of natural justice. I do not find any reason to entertain this writ petition under Article 226 of the Constitution of India.

Accordingly, without prejudice to the remedy



available to the petitioner under the statute, this writ petition is dismissed. Since the petitioner was prosecuting the writ petition before this Court, I think that is only just and proper to give some time to the petitioner to prefer the statutory appeal. If the petitioner files an appeal under Section 246A of the Act before the statutory appellate authority within a period of 15 days from the date of receipt of a copy of this judgment, the appeal shall be entertained by the said authority and appropriate orders shall be passed on merits. Till the stay petition, if any, accompanying the appeal is disposed of, the recovery steps pursuant to Exts.P7 assessment order and P8 demand notice shall be deferred.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**



APPENDIX

PETITIONER'S EXHIBITS :-

- EXHIBIT P1 TRUE COPY OF THE NOTICE DATED 02.06.2023 ISSUED UNDER SECTION 143(2) OF THE INCOME TAX ACT BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P2 TRUE COPY OF THE REPLY DATED 25.08.2023 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P3 TRUE COPY OF THE NOTICE DATED 03.11.2023 ISSUED BY THE 1ST RESPONDENT UNDER SECTION 142(1) TO THE PETITIONER.
- EXHIBIT P4 TRUE COPY OF THE REPLY DATED 17.11.2023 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 01.03.2024 ISSUED UNDER SECTION 144 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 07.03.2024 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT P7 TRUE COPY OF THE ASSESSMENT ORDER DATED 21.03.2024 ALONG WITH THE COMPUTATION SHEET.
- EXHIBIT P8 TRUE COPY OF THE NOTICE OF DEMAND UNDER SECTION 156 DATED 21.03.2024.
- EXHIBIT P9 TRUE COPY OF JUDGMENT DATED 19.01.2023 IN WPC NO 23767/2022.

RESPONDENTS ANNEXURES :- NIL.