

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 20TH DAY OF JUNE 2025 / 30TH JYAISHTA, 1947

WP(C) NO. 12164 OF 2023

PETITIONERS:

SALIM ABOOBACKER,
AGED 64 YEARS
S/O.ABOOBACKER, 2/183, PLAVILA HOUSE, KAITHAKOTTUKONAM,
BALARAMAPURAM P.O., NEYYATTINKARA, THIRUVANANTHAPURAM
DISTRICT- 695501.

BY ADVS.
SRI.BABU S. NAIR
SMT.SMITHA BABU

RESPONDENT:

THE INCOME TAX OFFICER,
WARD 1(3), OFFICE OF THE INCOME TAX OFFICER, AAYKAR
BHAVAN, 1ST FLOOT, KOWDIYAR P.O., TRIVANDRUM -695003.

BY ADV CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT
SHRI.JOSE JOSEPH, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner is an assessee of income tax, and this writ petition is filed by the petitioner, being aggrieved by the Ext.P4 order passed under Section 148(A) of the Income Tax Act, 1961, pertaining to the assessment year 2016-17. Initially the petitioner was served with Ext.P1 notice under subsection 6 of section 133 of the Income Tax Act, 1961, requiring certain documents/information, as it was pointed out that the petitioner failed to submit returns pertaining to the assessment year 2016-2017. The petitioner submitted Ext.P2 in reply to the same, pointing out that the petitioner did not submit the return as the income received by him from the panchayat public market and comfort station taken in auction by the petitioner, was below the ceiling limit that mandates the compulsory filing of income tax returns. It was also pointed out that the amount referred to in Ext.P1 notice, pertains to the total transactions that the petitioner had, and out of the said amount, the petitioner had already remitted Rs.26,47,575/- to the panchayat with whom the petitioner had entered into the contract. Thus, according to the petitioner, the income generated from the same was below the



ceiling contemplated under the Act. Later, Ext.P4 notice was issued to the petitioner under Section 148 A(b) of the Income Tax Act, 1961, and the said proceeding ultimately culminated in Ext.P6 even though the petitioner submitted a detailed objection against Ext.P4. One of the objections raised by the petitioner was that the proceedings under Section 148 A are barred under the limitation contemplated under Section 149(1). This writ petition is filed in such circumstances challenging Ext.P6.

2. I have heard of Sri. Babu S. Nair, learned counsel for the petitioner, and Sri. Christopher Abraham, learned Standing Counsel for the respondent. The only question that arises for consideration is whether the proceedings initiated as per Ext.P4 and culminated in Ext.P6 are barred by limitation. As rightly pointed out by the learned counsel for the petitioner, as per Section 149, the statutory time limit contemplated for initiating proceedings under Section 148 is three years from the end of the relevant assessment year. However, in a case where the escaped assessment is likely to be Rs.50 lakhs or more, the period can be up to 10 years. Therefore, it was contended by the learned counsel for the petitioner that as the amount alleged to have



escaped from assessment, even going by the impugned order, is less than Rs. 50 lakhs, under no circumstances can the proceedings now initiated, be said to be legally sustainable.

3. On carefully going through the relevant dates as is discernible from the documents produced, I find merit in the said submission. The relevant assessment year is 2016-17, and therefore, going by the statutory stipulations, the proceedings ought to have been commenced on or before 31.03.2020. It is also evident from Ext.P6 assessment order that the amount allegedly escaped from the assessment was less than 50 lakhs, and therefore the higher period as specified in subclause (b) of Section 149 (1) is not applicable.

4. The learned Standing Counsel for the respondent, on the other hand, relied on the decision rendered by the Hon'ble Supreme Court in **Anshul Jain v. Principal Commissioner of Income Tax and another [2022] 449 ITR 251**, wherein, the Hon'ble Supreme Court refused to interfere with the matter but relegated the party to approaching assessment officers. However, on going through the observations made by the Hon'ble Supreme Court in the aforesaid decisions, it can be seen that the factual



circumstances that existed in the said case were different. As far as the question of limitation is concerned, it is something that goes to the root of the case, and thus it affects the very jurisdiction of the appropriate authority to initiate the proceedings. In this case, evidently there is a statutory bar by virtue of the period of limitation contemplated under the Act, and to determine the same, no detailed enquiry is necessary.

5. Therefore, I am not inclined to accept the contention of the learned Standing Counsel that this is the matter to be agitated before the assessing officer. When the order of the assessing authority is found to be without jurisdiction and hit by the period of limitation, it is not necessary to relegate the party concerned to undergo the rigor of the statutory proceedings.

In such circumstances, this writ petition is disposed of quashing Ext. P6, holding that any proceeding under section 148A or the consequential proceeding under 148 beyond the statutory period contemplated under the provisions of the Income Tax Act.

Sd/-

**ZIYAD RAHMAN A.A.
JUDGE**

sjb/pkk



APPENDIX OF WP(C) 12164/2023

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER UNDER SECTION 133(6) OF THE INCOME TAX ACT DATED, 13-2-2023
- EXHIBIT P2 A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED, 20-2-2023 (WITHOUT ANNEXURES)
- EXHIBIT P3 TRUE COPY OF THE CERTIFICATE ISSUED FROM THE BALARAMAPURAM GRAMA PANCHAYATH DATED, 20-2-2023
- EXHIBIT P4 A TRUE COPY OF THE NOTICE ISSUED BY THE RESPONDENT TO THE PETITIONER DATED, 27-2-2023
- EXHIBIT P5 A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT DATED, 1-3-2023
- EXHIBIT P6 A TRUE COPY OF THE ORDER PASSED BY THE RESPONDENT DATED, 17-3-2023
- EXHIBIT P7 TRUE COPY OF THE NOTICE ISSUED BY THE RESPONDENT UNDER SECTION 148 OF THE INCOME TAX ACT TO THE PETITIONER DATED, 17-3-2023

RESPONDENT EXHIBITS

- EXHIBIT R (A) JUDGMENT OF THE SUPREME COURT IN THE CASE OF ANSHUL JAIN VS. THE PRINCIPAL COMMISSIONER OF INCOME TAX AND ANOTHER
- EXHIBIT R(B) COPY OF THE JUDGMENT OF THE PUNJAB AND HARYANA HIGH COURT IN THE CASE OF ANSHUL JAIN VS. PRINCIPAL COMMISSIONER OF INCOME TAX AND ANOTHER, 449 ITR 251
- EXHIBIT R(C) COPY OF THE JUDGMENT OF THE KERALA HIGH COURT IN W.P.(C) NO. 37527 OF 2022 IN THE CASE OF MS. VISWABHARATHI MEDICALS VS. INCOME TAX OFFICER