2023:KER:73875

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 20TH DAY OF NOVEMBER 2023 / 29TH KARTHIKA, 1945

WP(C) NO. 38201 OF 2023

PETITIONER/S:

MANMADHAN NAIR
AGED 73 YEARS
S/O.M.R.RAGHAVAN NAIR, SREENANDANAM, WATER AUTHORITY ROAD, KALLARA KADAVU, PATHANAMTHITTA P.O., PATHANAMTHITTA H.Q., PATHANAMTHITTA, PIN - 689645

BY ADVS.
P.SATHISAN
DONA AUGUSTINE
JAVED HAIDER
ABHIRAM SUNISH
SHIBU B.S
BIJU P.PAUL
GOPIKA ANIL

RESPONDENT/S:

1 THE CENTRAL BOARD OF DIRECT TAXES
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK NEW DELHI- REPRESENTED BY ITS CHAIRMAN, PIN - 110001

2 THE ADDITIONAL COMMISSIONER OF INCOME TAX
ASSESSMENT UNIT, INCOME TAX DEPARTMENT, NATIONAL FACELESS ASSESSMENT CENTRE, DELHI ROOM NO. 401, 2ND FLOOR, E-RAMP, JAWAHARLAL NEHRU STADIUM, DELHI,, PIN - 110003

3 THE COMMISSIONER OF INCOME TAX (APPEALS)
NATIONAL FACELESS APPEAL CENTRE (NFAC), DELHI, ROOM NO.401, 2ND FLOOR, E-RAMP, JAWAHARLAL NEHRU STADIUM, DELHI,, PIN - 110003

4 THE ASSESSING OFFICER
ASSESSMENT UNIT, INCOME TAX DEPARTMENT NATIONAL FACELESS ASSESSMENT CENTRE, DELHI ROOM NO. 401, 2ND FLOOR, E-RAMP, JAWAHARLAL NEHRU STADIUM, DELHI,, PIN - 110003

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 20th day of November, 2023

The present writ petition has been filed under Article 226 of the Constitution of India to stay all further proceedings on Ext.P7 order Ext.P8 and Ext.P9 til the disposal of Ext.P10 appeal filed by the petitioner. Alternatively it has been prayed the direction given to the 4th respondent to consider and dispose of stay application filed by the petitioner in Ext.P10 appeal, without pre-deposit of 20% of disputed tax demand as per Exts.P7, P8 and P9.

2. The petitioner's wife late Swarna Manmadhan Nair, an assessee under the provisions of the Income Tax Act, filed her return of income for the assessment year 2020-21 on 10.01.2021 declaring the total income of Rs.4,96,480/- and declared agriculture income of Rs.57,45,941/-.

3. The assessment order was finalised on 13.09.2022, and addition of Rs.57,45,941/- was made under the provisions of Section 69A of the Income Tax Act, as the assessee could not restrain the said receipt of Rs.57,45,941/- which was shown in the return as the income

from agriculture. Total assessed income of the assesee was assessed as Rs.62,42,421/- on which tax and penalty were imposed. The petitioner being husband of the assessee as the assessee had died in the meantime, challenged the said order in Ext.P10 appeal. The present writ petition has been filed for staying the demand.

This Court fails to understand that how this writ petition is maintainable before this Court. This Court does not exercise the parallel jurisdiction of the Appellate Authority to entertain the stay application while the petitioner has not chosen to file the stay application in the appeal itself. Thus I find no ground to entertain this writ petition. Therefore, the writ petition is hereby dismissed. However, the Appellate Authority is directed to proceed with the appeal expeditiously and finalise the same, preferably within a period of six months, in accordance with law.

Sd/-

DINESH KUMAR SINGH

JUDGE

AP

APPENDIX OF WP(C) 38201/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE DISCHARGE CERTIFICATE NO.18548 ISSUED BY ARMY
Exhibit P2	TRUE COPY OF THE SAID SALE AGREEMENT DATED 20.05.2019
Exhibit P3	TRUE COPY OF THE RELEVANT EXTRACT OF THE IT RETURN FILED BY ASSESSE FOR THE YEAR 2020-21
Exhibit P4	TRUE COPY OF THE SAID NOTICE DATED 29.06.2021 ISSUED BY THE ASSESSING OFFICER
Exhibit P5	TRUE COPY OF THE SAID NOTICE DATED 24.11.2021 ISSUED BY THE ASSESSING OFFICER
Exhibit P6	TRUE COPY OF THE REPLY DATED 31.03.2022 ISSUED BY THE PETITIONER
Exhibit P7	TRUE COPY OF THE ASSESSMENT ORDER OF ASSESSING OFFICER DATED 13.09.2022
Exhibit P8	TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY ASSESSING OFFICER DATED 30.12.2022
Exhibit P9	TRUE COPY OF THE NOTICE DATED 11.07.2023
Exhibit P10	TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AS PER FORM NO.35 DATED 29.09.2022 BEFORE THE 3RD RESPONDENT