



2023:KER:74048

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 21ST DAY OF NOVEMBER 2023 / 30TH KARTHIKA, 1945

WP(C) NO. 37544 OF 2023

PETITIONER:

MICHEALLE FATIMA NIAZ,
AGED 40 YEARS, W/O. LATE MOHAMMED NIAZ,
ZEREENE (ABAD RESIDENCY), CHERANELLUR ROAD,
EDAPALLY P. O., KOCHI,
ERNAKULAM DISTRICT, PIN - 682024.

BY ADVS.

SRI. K. J. ABRAHAM
SRI. PREMJIT NAGENDRAN
SRI. NIKHIL JOHN
SRI. ARAVINDAKSHAN K. R.
SRI. AKHIL SHAJI

RESPONDENT:

THE COMMISSIONER OF INCOME TAX (APPEALS)-3,
4TH FLOOR, CENTRAL REVENUE BUILDING,
I. S. PRESS ROAD, KOCHI, PIN - 682018.

BY ADV.

SMT. SUSIE B. VARGHESE - SR. SC - ITD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



DINESH KUMAR SINGH, J.

W.P.(C) No.37544 of 2023

Dated this the 21st day of November, 2023

JUDGMENT

1. Heard Mr. Abraham K. J., Learned Counsel for the petitioner and Ms. Susie B. Varghese, learned Senior Counsel for the Income Tax Department.
2. The present writ petition under Article 226 of the Constitution of India has been filed impugning Exhibits P-34 to P-39 orders passed by the Commissioner of Income Tax (Appeals) – 3, Kochi in Exhibits P-8 to P-13 appeals which are instituted by one late Mr. Mohammed Niaz, husband of the petitioner on 22.12.2017 against Exhibits P-2 to P-7 assessment orders of the Deputy Commissioner of Income Tax, Central Circle – 1, Ernakulam for the assessment years 2010-11 to 2015-16 respectively.
3. The husband of the petitioner had died on 09.05.2018, after instituting the appeals. The impugned orders in Exhibits P-34 to P-39 would disclose that several notices for hearing in the appeals were issued to the assessee. However, there were no response to any one of



the said notices. The date was fixed on 05.06.2023 for hearing by the notice dated 30.05.2023. In response to the said notice dated 30.05.2023, petitioner, the wife of late Mohammed Niaz sent letter dated 07.06.2023 intimating that her husband had died on 09.05.2018. She also prayed for her impleadment in the appeal in place of her husband. Therefore, the appeals were posted for hearing on 12.06.2023. Thereafter a letter attaching the death certificate of Mohammed Niaz and other documents were filed in the appeal. Exhibits P-15 to P-20 Show Cause Notices dated 23.06.2023 were issued to the petitioner to which the response was filed vide letter dated 16.08.2023 showing the grounds of appeal and written submission was also filed on 16.08.2023. Considering the grounds of appeal and written submissions, the impugned orders in Exhibits P-34 to P-39 came to be passed. It is very well clear that the appeals were filed physically.

4. Section 250 of the Income Tax Act, lays down the procedure in appeal. Sub-section (1) of Section 250 mandates the Joint Commissioner (Appeals) or Commissioner (Appeals), as the case may be, to fix a date and place for hearing on the appeal and notice fixing the date and time is required to be given to the appellant and the



Assessing Officer. On receipt of the notice, the appellant in person or authorised representatives may appear and he/she would have the right to be heard.

5. From the facts as narrated in the impugned orders itself is evident that after 12.06.2023, no notice of hearing was issued to the petitioner though she had replied to Exhibits P-15 to P-20 Show Cause Notices as well as filed the written submissions on 16.08.2023. The Commissioner (Appeals) was aware of the fact that the petitioner's husband had died on 09.05.2018 and the petitioner being the wife and legal heir of her late husband has filed impleadment application and also has filed the written submission and responded to the Show Cause Notices. It is therefore incumbent on the Commissioner (Appeals) to fix the date and place of hearing in the appeals and for that purpose a notice ought to have been issued to the petitioner herein as per the provisions of Section 250 of the Income Tax Act. No such notice fixing the date and place of hearing was issued after filing of the written submission by the petitioner.

6. Ms. Susie B. Varghese, learned Senior Standing Counsel for the Income Tax Department is not in a position to dispute the said facts that no notice of hearing after filing written submission by the



petitioner was given to the petitioner fixing the date and place of hearing. I, thus find that the impugned orders have been issued in violation of the procedure prescribed under Section 250 of the Income Tax Act for hearing and deciding the appeals.

7. In view thereof, the present writ petition is allowed and the impugned orders in Exhibits P-34 to P-39 are set aside. The matter is remanded back to the file of the respondent to pass fresh order in accordance with the law. The petitioner is directed to appear before the respondent on 04.12.2023. No notice of hearing shall be issued to the petitioner. The petitioner may take additional grounds in support of the appeal if she so advised and the respondent shall proceed to decide the appeals afresh after hearing the petitioner.

8. It is also made clear that no other opportunities shall be given to the petitioner for filing any other documents or evidence except filing of additional grounds if she so advised.

With the above directions, the present writ petition is hereby disposed of.

**Sd/-
DINESH KUMAR SINGH
JUDGE**

**APPENDIX OF WP(C) 37544/2023****PETITIONER'S EXHIBITS**

- EXHIBIT P1 A TRUE COPY OF THE DEATH CERTIFICATE DATED
04.06.2018 OF THE LATE MOHAMMED NIAZ
- EXHIBIT P2 TRUE COPY OF THE ASSESSMENT ORDER DATED 21.11.2017
FOR THE YEARS 2010-2011 ISSUED BY THE DEPUTY
COMMISSIONER INCOME TAX CIRCLE-1, ERNAKULAM
- EXHIBIT P3 TRUE COPY OF THE ASSESSMENT ORDER DATED 21.11.2017
FOR THE YEARS 2011-2012 ISSUED BY THE DEPUTY
COMMISSIONER INCOME TAX CIRCLE-1, ERNAKULAM
- EXHIBIT P4 TRUE COPY OF THE ASSESSMENT ORDER DATED 21.11.2017
FOR THE YEARS 2012-2013 ISSUED BY THE DEPUTY
COMMISSIONER INCOME TAX CIRCLE-1, ERNAKULAM
- EXHIBIT P5 TRUE COPY OF THE ASSESSMENT ORDER DATED 21.11.2017
FOR THE YEARS 2013-2014 ISSUED BY THE DEPUTY
COMMISSIONER INCOME TAX CIRCLE-1, ERNAKULAM
- EXHIBIT P6 TRUE COPY OF THE ASSESSMENT ORDER DATED 21.11.2017
FOR THE YEARS 2014-2015 ISSUED BY THE DEPUTY
COMMISSIONER INCOME TAX CIRCLE-1, ERNAKULAM
- EXHIBIT P7 TRUE COPY OF THE ASSESSMENT ORDER DATED 21.11.2017
FOR THE YEARS 2015-2016 ISSUED BY THE DEPUTY
COMMISSIONER INCOME TAX CIRCLE-1, ERNAKULAM
- EXHIBIT P8 TRUE COPY OF THE APPEAL NO. CIT(A), KOCHI-3/10241/
2018-19 DATED 22.12.2017 FOR THE ASSESSMENT YEAR
2010-11
- EXHIBIT P9 TRUE COPY OF THE APPEAL NO. CIT(A), KOCHI-3
/10243/2018-19 DATED 22.12.2017 FOR THE ASSESSMENT
YEAR 2011-12
- EXHIBIT P10 TRUE COPY OF THE APPEAL NO. CIT(A), KOCHI-3 /10244/
2018-19 DATED 22.12.2017 FOR THE ASSESSMENT YEAR
2012-13



- EXHIBIT P11 TRUE COPY OF THE APPEAL NO.CIT(A), KOCHI-3 /10247/ 2018-19 DATED 22.12.2017 FOR THE ASSESSMENT YEAR 2013-14
- EXHIBIT P12 TRUE COPY OF THE APPEAL NO.CIT(A), KOCHI-3 /10245/2018-19 DATED 22.12.2017 FOR THE ASSESSMENT YEAR 2014-15
- EXHIBIT P13 TRUE COPY OF THE APPEAL NO.CIT(A), KOCHI-3 /10242/2018-19 DATED 22.12.2017 FOR THE ASSESSMENT YEAR 2015-16
- EXHIBIT P14 TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE RESPONDENT DATED 07.06.2023
- EXHIBIT P15 TRUE COPY OF THE SHOW CAUSE NOTICE NO. ITBA/APL/F/APL_2/2023-24/1053897001(1) DATED 23.06.2023 FOR THE ASSESSMENT YEAR 2010-11 ISSUED BY THE RESPONDENT
- EXHIBIT P16 TRUE COPY OF THE SHOW CAUSE NOTICE NO. ITBA/APL/F/APL_2/2023-24/1053897012(1) DATED 23.06.2023 FOR THE ASSESSMENT YEAR 2011-12 ISSUED BY THE RESPONDENT
- EXHIBIT P17 TRUE COPY OF THE SHOW CAUSE NOTICE NO. ITBA/APL/F/APL_2/2023-24/1053897020(1) DATED 23.06.2023 FOR THE ASSESSMENT YEAR 2012-13 ISSUED BY THE RESPONDENT
- EXHIBIT P18 TRUE COPY OF THE SHOW CAUSE NOTICE NO. ITBA/APL/F/APL_2/2023-24/1053897028(1) DATED 23.06.2023 FOR THE ASSESSMENT YEAR 2013-14 ISSUED BY THE RESPONDENT
- EXHIBIT P19 TRUE COPY OF THE SHOW CAUSE NOTICE NO. ITBA/APL/F/APL_2/2023-24/1053897037(1) DATED 23.06.2023 FOR THE ASSESSMENT YEAR 2014-15
- EXHIBIT P20 TRUE COPY OF THE SHOW CAUSE NOTICE NO. ITBA/APL/F/APL_2/2023-24/1053897040(1) DATED 23.06.2023 FOR THE ASSESSMENT YEAR 2015-16 ISSUED BY THE RESPONDENT



- EXHIBIT P21 TRUE COPY OF THE IMPEADING PETITION DATED 09.06.2023 FILED FOR THE YEAR 2010-11 FILED BY THE PETITIONER
- EXHIBIT P22 TRUE COPY OF THE IMPEADING PETITION DATED 09.06.2023 FILED FOR THE YEAR 2011-12 FILED BY THE PETITIONER
- EXHIBIT P23 TRUE COPY OF THE IMPEADING PETITION DATED 09.06.2023 FILED FOR THE YEAR 2012-13 FILED BY THE PETITIONER
- EXHIBIT P24 TRUE COPY OF THE IMPEADING PETITION DATED 09.06.2023 FILED FOR THE YEAR 2013-14 FILED BY THE PETITIONER
- EXHIBIT P25 TRUE COPY OF THE IMPEADING PETITION DATED 09.06.2023 FILED FOR THE YEAR 2014-15 FILED BY THE PETITIONER
- EXHIBIT P26 TRUE COPY OF THE IMPEADING PETITION DATED 09.06.2023 FILED FOR THE YEAR 2015-16 FILED BY THE PETITIONER
- EXHIBIT P27 TRUE PHOTOCOPY OF THE RELEVANT PAGE OF THE LETTER DELIVERY BOOK MAINTAINED BY THE COUNSEL FOR THE PETITIONER
- EXHIBIT P28 TRUE COPY OF THE OBJECTION DATED 16.08.2023 FILED FOR THE YEAR 2010-11 BY THE PETITIONER
- EXHIBIT P29 TRUE COPY OF THE OBJECTION DATED 16.08.2023 FILED FOR THE YEAR 2011-12 BY THE PETITIONER
- EXHIBIT P30 TRUE COPY OF THE OBJECTION DATED 16.08.2023 FILED FOR THE YEAR 2012-13 BY THE PETITIONER
- EXHIBIT P31 TRUE COPY OF THE OBJECTION DATED 16.08.2023 FILED FOR THE YEAR 2013-14 BY THE PETITIONER
- EXHIBIT P32 TRUE COPY OF THE OBJECTION DATED 16.08.2023 FILED FOR THE YEAR 2014-15 BY THE PETITIONER
- EXHIBIT P33 TRUE COPY OF THE OBJECTION DATED 16.08.2023 FILED FOR THE YEAR 2015-16 BY THE PETITIONER



WP(C) NO. 37544 OF 2023

2023:KER:74048

- EXHIBIT P34 TRUE COPY OF THE ORDER IN APPEAL NO. ITA.25/E/CIT(A) III/2019-20 DATED 14.09.2023 FOR THE YEAR 2010-11 PASSED BY THE RESPONDENT
- EXHIBIT P35 TRUE COPY OF THE ORDER IN APPEAL NO. ITA.26/E/CIT(A) III/2019-20 DATED 13.09.2023 FOR THE YEAR 2011-12 PASSED BY THE RESPONDENT
- EXHIBIT P36 TRUE COPY OF THE ORDER IN APPEAL NO. ITA.27/E/CIT(A) III/2019-20 DATED 14.09.2023 FOR THE YEAR 2012-13 PASSED BY THE RESPONDENT
- EXHIBIT P37 TRUE COPY OF THE ORDER IN APPEAL NO. ITA.28/E/CIT(A) III/2019-20 DATED 14.09.2023 FOR THE YEAR 2013-14 PASSED BY THE RESPONDENT
- EXHIBIT P38 TRUE COPY OF THE ORDER IN APPEAL NO. ITA.29/E/CIT(A) III/2019-20 DATED 14.09.2023 FOR THE YEAR 2014-15 PASSED BY THE RESPONDENT
- EXHIBIT P39 TRUE COPY OF THE ORDER IN APPEAL NO. ITA.30/E/CIT(A) III/2019-20 DATED 14.09.2023 FOR THE YEAR 2015-16 PASSED BY THE RESPONDENT
- EXHIBIT P40 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C) 22682/2023 DATED 25.09.2023