IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 7TH DAY OF NOVEMBER 2024 / 16TH KARTHIKA, 1946

WP(C) NO. 25143 OF 2024

PETITIONER:

MES MEDICAL COLLEGE HOSPITAL
REPRESENTED BY ITS DIRECTOR
DR. P.A. FAZAL GHAFOOR,
VALANCHERY-NILAMBUR ROAD, PALACHODE POST,
MALAPARAMBA, PERINTHALMANNA, KOLATHUR, MALAPPURAM,
KERALA, PIN – 679 338.

BY ADVS.
M.A.VAHEEDA BABU
BABU KARUKAPADATH
ARYA RAGHUNATH
KARUKAPADATH WAZIM BABU
P.LAKSHMI
AYSHA E.M.
DENNIS BIJU
ABUASIL A.K.
SHAWN JOHNSON
K.R.PRATHISH
S.RENJITH
P.K.SREEVALSAKRISHNAN
S.UNNIKRISHNAN (NELLAD)
KRISHNA DAS

RESPONDENTS:

1 CENTRAL BOARD OF DIRECT TAXES,
684+324, NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI, DELHI, PIN – 110 001.

2 PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, OLD RAILWAY STATION ROAD, KOCHI,
PIN – 682 018.

3 C.P. HAMSA,
AGED 57 YEARS
CHIRUTHA PARAMBIL HOUSE, KOLATHUR P.O.,
KURUVAMBALAM, PERINTHALMANNA, PIN – 679 339.

4 AATHIKA,
AGED 51 YEARS
CHIRUTHA PARAMBIL HOUSE, KOLATHUR P.O.,
KURUVAMBALAM, PERINTHALMANNA, PIN – 679 339.

5 CHANDI PAULOSE,
AGED 72 YEARS
ALEX BHAVAN, PERINTHALMANNA, VETTATHUR,
THELAKKADU P.O., THALACODE, PIN – 679 325.

6 KHADER,
AGED 70 YEARS
KARAPPUM VEETTIL, KUNNUMKULAM TALUK,
KANDANASSERY VILLAGE, KANDANASSERY, PIN – 680 102.

7 SUHARA,
AGED 64 YEARS
KARAPPUM VEETTIL, KUNNUMKULAM VILLAGE,
KANDANNASSERY VILLAGE, KANDANASSERY,
PIN – 680 102.

BY ADVS.
P.G.JAYASHANKAR (Sr.SC)
G.KEERTHIVAS (SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.11.2024, THE COURT ON 07.11.2024 DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has brought a peculiar problem to the notice of this Court. The petitioner had taken on lease a building after entering into a lease agreement with the 3rd respondent. After taking on lease the building, the 3rd respondent informed the petitioner that the property had been transferred into the name of his wife, the 4th respondent, by Ext.P2 settlement deed. Accordingly, the petitioner entered into a new lease agreement with the 4th respondent on 21-04-2022. It appears that respondent Nos.5, 6 and 7 filed a suit before the Subordinate Judges Court, Manjeri (hereinafter referred to as the 'court') for recovery of possession, arrears of rent, damages etc. as O.S.No.129/2022 claiming that they are the rightful owners of the property. Pursuant to an order issued by the court, in I.A.No.7 of 2024, the petitioner started depositing the rent payable in the court. The petitioner deposited Rs.26,00,000/- (Rupees Twenty Six Lakhs) being the arrears of rent till that date, and continues to pay the rent by depositing the amount before the court.

2. The learned counsel for the petitioner submits that the petitioner is willing to deposit the rent for the subsequent periods also before the court as directed by the court. The petitioner is before this Court on account of the provisions contained in Section 194-I of the Income Tax Act, 1961, which requires the petitioner to deduct TDS on the rent paid by it and deposit the same with the Income Tax Department. It is submitted that on account of the dispute between respondent Nos.3 and 4 on one side and respondent Nos.5, 6 and 7 on the other, the petitioner is in a situation that it cannot deduct and pay TDS as the payee is not readily identifiable. In other words, it is submitted that on account of the dispute between respondent Nos.3 and 5 on one side and respondent Nos.5, 6 and 7 on the other, the petitioner is unable to remit the amount of TDS in the name of any one person/persons.

3. The learned Senior Standing Counsel for respondent Nos.1 and 2 has filed a statement where amongst other things, it is stated as follows:

> *3(b). Alternatively, the deductor can be directed to deduct the tax every month and deposit the remaining amount of rent with the Court. The tax deducted so can be remitted into the Govt account through the TAN of the deductor. The deductor can keep the amount in his TAN as* ***unclaimed chalan*** *without giving credit to any PAN. Once the outcome of O.S. No 129/2022 has been reached, the deductor can then give credit to the actual owner/owners of the rental building. It can be assumed that the deductor being a medical college will be filing 26Q statements every quarter owing to contract and other payments. Therefore, the deductor is at the leisure to revise the TDS returns filed any time and give credit to the actual owner of the rented building. However, this poses a challenge that the final judgement in O.S. No 129/2022 to be passed within such a period where the actual payee can file their return within the time limits specified in 139(8A) or 119(2)(b).*

4. Despite service of notice, there is no appearance for respondent Nos. 3 to 7. Having heard the learned counsel for the petitioner and the learned Senior Standing Counsel for respondent Nos.1 and 2, I am of the view that the

petitioner can be permitted to continue with the deposit of rent before the court, after deducting TDS. Insofar as the TDS amount is concerned, the petitioner will remit the amount to the Income Tax Department under his TAN as unclaimed challan subject to the decision of the court. The person who is entitled to the benefit of credit to the extent of TDS deposited may either claim the amount after the dispute over ownership is decided by the court, in which event the petitioner may also be required to file a revised TDS return. If there is any statutory time limit for claiming the benefit of the tax deducted and so paid by the petitioner in the manner indicated above, it is open to the persons who may be aggrieved by non-receipt of the credit (to the extent of tax deducted) to apply to the competent authority under the provisions of Section 119(2)(b) of the Income Tax Act, 1961.

Writ petition is disposed of accordingly.

Sd/-
GOPINATH P.
JUDGE

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APPENDIX OF WP(C) 25143/2024

PETITIONER'S EXHIBITS

Exhibit P1	**A TRUE COPY OF THE TDS CERTIFICATE DATED 09.08.2021 ISSUED IN FAVOUR 3RD RESPONDENT FOR THE PERIODS 01.01.2021 TO 31.03.2021 ON DEPOSITING TDS BY THE PETITIONER.**
Exhibit P2	**A TRUE COPY OF THE SETTLEMENT DEED DATED 18.11.2021 EXECUTED BY THE 3RD RESPONDENT IN FAVOUR OF HIS 4TH RESPONDENT WIFE, WHICH WAS PRODUCED BEFORE THE PETITIONER EVIDENCING THE TRANSFER.**
Exhibit P3	**A TRUE COPY OF ONE OF THE OWNERSHIP CERTIFICATES DATED 03.03.2022 ISSUED BY PUZHAKKATTIRI GRAMA PANCHAYATH IN FAVOUR OF THE 4TH RESPONDENT, WHICH WAS PRODUCED BY THE 3RD RESPONDENT BEFORE THE PETITIONER EVIDENCING CHANGE OF OWNERSHIP.**
Exhibit P4	**A TRUE COPY OF THE POSSESSION CERTIFICATE DATED 03.03.2022 ISSUED BY THE PUZHAKKATTIRI GRAMA PANCHAYATH IN FAVOUR OF THE 4TH RESPONDENT, WHICH WAS PRODUCED BY THE 3RD RESPONDENT BEFORE THE PETITIONER EVIDENCING CHANGE OF OWNERSHIP.**
Exhibit P5	**TRUE COPIES OF THE PROPERTY TAX PAYMENT RECEIPTS DATED 08.04.2022 ISSUED BY THE PUZHAKKATTIRI GRAMA PANCHAYATH IN FAVOUR OF THE 4TH RESPONDENT, WITH RESPECT TO ALL THE 19 UNITS OF THE RENTAL BUILDING HAVING BUILDING NO.300A TO 300 U, EVIDENCING ITS CHANGE OF OWNERSHIP.**

Exhibit P6	**A TRUE COPY OF THE PLAINT FILED BY THE 5TH, 6TH AND 7TH RESPONDENTS DATED 25.11.2022 BEFORE THE HON'BLE SUB COURT, MANJERI.**
Exhibit P7	**A TRUE COPY OF THE ORDER DATED 28.05.2024 PASSED BY THE HON'BLE SUB COURT, MANJERI IN I.A NO 07/2024 IN O.S NO 129/2022, CLOSING THE SAME, RECORDING THE DEPOSIT OF THE RENTAL AMOUNT.**
Exhibit P8	**A TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF DELHI IN UCO BANK V UNION OF INDIA (2014) 272 CTR (DEL) 339 (MANUPATRA).**