



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 5TH DAY OF APRIL 2024 / 16TH CHAITHRA, 1946

WA NO. 2 OF 2024

AGAINST THE ORDER/JUDGMENT DATED IN WP(C) NO.14993 OF 2023
OF HIGH COURT OF KERALA

APPELLANT

K. ABDUL MAJEED,
AGED 46 YEARS
S/O.K.MOHAMMED, KAMBRATH HOUSE, KALPAKACHERI,
RANDATHANI, MALAPPURAM DISTRICT. REPRESENTED BY
HIS POWER OF ATTORNEY HOLDER, PRASAD THOTTIYIL,
AGED 33 YEARS, S/O.VELAYUDHAN THOTTIYIL, RESIDING
AT THOTTIYIL HOUSE, KODAKKALINGAL, CHULLIPARA
P.O., TIRURANGADI, MALAPPURAM DISTRICT,
PIN - 676510

BY ADVS.
K.J.ABRAHAM
PREMJIT NAGENDRAN
NIKHIL JOHN

RESPONDENT/RESPONDENT:

THE INCOME TAX OFFICER,
WARD-2, 2ND FLOOR, TARIFF BAZAR, OPP. TOWN HALL,
CHEMBRA, TIRUR, MALAPPURAM DISTRICT,
PIN - 676101

BY ADVS.
P.G.JAYASHANKAR
G.KEERTHIVAS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
05.04.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**JUDGMENT**

Dr. A.K.Jayasankaran Nambiar, J.

This writ appeal is preferred against the judgment dated 21.12.2023 of the learned Single Judge in W.P(C) No.14993 of 2023. In the writ petition, Exts.P6 and P7 orders that were passed under Section 148(A)(d) of the Income Tax Act (hereinafter referred to as the 'I.T.Act'), in respect of assessment years 2016-2017 and 2019-2020 respectively, were impugned. The said orders recorded the satisfaction of the Income Tax Authority, that the case of the appellant was a fit one for issuance of notice under Section 148 of the I.T.Act for reassessment of the income of the appellant for those years.

2. The ground urged in the writ petition was that the appellant was not heard in person before passing Exts.P6 and P7 orders. The learned Single Judge found force in the said contention of the appellant and quashed Exts.P6 and P7 orders and remanded the matter back to the respondent with a direction to provide an opportunity of hearing to the appellant, and pass fresh orders under Section 148(A)(d) of the I.T.Act.



3. In the appeal before us, it is the submission of the learned counsel for the appellant that Exts.P6 and P7 orders recording the satisfaction of the assessing authority that the case against the appellant was a fit one for re-opening the assessment under Section 147 of the I.T.Act, was based on certain deposits made in three bank accounts that belonged to third persons, and which the department believed were paid into the said accounts by the appellant. It is the specific case of the appellant that he has nothing to do with the said bank accounts and that the money did not belong to him at any stage.

4. When the appeal came up for admission, we had issued notice before admission on 05.01.2024 and stayed further proceedings pursuant to the impugned judgment as against the appellant. Thereafter, when fresh reassessment proceedings were initiated on the same ground for the assessment year 2020-2021, we had, by our order dated 21.03.2024, granted an interim stay of further proceedings pursuant to Annexure A, pending disposal of the writ appeal. We had also directed the respondent to file an affidavit, stating the action if any, initiated against the account holders of the bank accounts in which the amounts referred to above had been deposited. By an affidavit filed on 01.04.2024, it is stated that the said deposits made in the bank accounts referred above, have been treated as the unexplained investment of Mr.Rejilal, Sajilal and Pankajam under Section 69 of the I.T.Act. If that be the case, then



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we fail to understand how proceedings under Section 148 can be continued against the appellant herein, more so when the assessment completed against the aforesaid Rejilal, Sajilal and Pankajam is not a protective assessment. We are therefore of the view that this writ appeal has to be allowed, by setting aside the impugned judgment of the learned Single Judge to the extent it remands the matter back to the respondent for passing fresh orders under Section 148(A)(d) of the I.T.Act.

In the result, the writ appeal is allowed and the writ petition is also allowed unconditionally by quashing Exts.P6 and P7 orders that were impugned therein. Needless to say, the consequential orders namely, Exts.P8 and P9 produced in the writ petition and Annexures A and B produced through I.A Nos.1 and 3 of 2024 in the Writ Appeal shall also stand quashed.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

SYAM KUMAR V.M.
JUDGE

smm



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APPENDIX OF WA 2/2024

PETITIONER ANNEXURES

Annexure A	TRUE COPY OF THE NOTICE NO:ITBA/AST/F/148A(SCN)/2023- 24/1062849475(1) DATED 18.03.2024 ISSUED BY THE RESPONDENT FOR THE ASSESSMENT YEAR 2020-21
Annexure-B	TRUE COPY OF THE NOTICE NO:ITBA/AST/F/148A(SCN)/2023- 24/1063075024(1) DATED 21.03.2024 ISSUED BY THE RESPONDENT FOR THE ASSESSMENT YEAR 2017-18 .