



2024:KER:21163

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 15TH DAY OF MARCH 2024 / 25TH PHALGUNA, 1945

WP(C) NO. 10023 OF 2024

PETITIONER:

M/S. ALKA VENTURES PRIVATE LIMITED,
T.C. 36/1690(1) MEENA, SUBHASH NAGAR, TRIVANDRUM,
REPRESENTED BY ITS FINANCE MANAGER & AUTHORIZED
SIGNATORY, SHRI. KUMAR MADHAVAN.

BY ADVS.

G.MINI(1748)

P.J.ANILKUMAR

P.S.SREE PRASAD

RESPONDENTS:

- 1 ADDITIONAL / JOINT / DEPUTY / ASSISTANT COMMISSIONER OF
INCOME TAX / INCOME TAX OFFICER,
NATIONAL FACELESS ASSESSMENT CENTRE, NEW DELHI,
PIN - 110 001.
- 2 NATIONAL FACELESS ASSESSMENT CENTRE,
(UNDER THE NATIONAL FACELESS APPEALS SCHEME), NEW DELHI,
REPRESENTED BY THE CIT (APPEALS), PIN - 110 001.
- 3 THE COMMISSIONER OF INCOME TAX (APPEALS),
NATIONAL FACELESS ASSESSMENT CENTRE, NEW DELHI,
PIN - 110 001.
- 4 THE JOINT COMMISSIONER OF INCOME TAX,
KARAMANA (PO), THIRUVANANTHAPURAM, PIN - 695 002.
BY ADVS.

SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

SRI. A. KUMAR (SR.)

P.R. AJITH KUMAR, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

The petitioner is a Private Limited Company engaged in the real estate business. For the assessment year 2016-17, the petitioner did not file a return of income. Proceedings were initiated for assessment, following which an order was issued under Section 147 r/w Section 144 and Section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the 1961 Act'). There were some transactions of purchase and sale of immovable property in that assessment year and the proceedings were finalized against the petitioner on the basis that there was unexplained investment under Section 69 of the 1961 Act. The petitioner was, therefore, assessed at the higher rate of tax by applying the provisions of Section 115 BBE of the 1961 Act.

2. According to the petitioner, the petitioner had earlier approached this Court challenging the order of assessment by filing W.P.(C)No.13736/2022. However, that writ petition was disposed of on 30.01.2024 refusing to interfere with the order of assessment and directing that the petitioner



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will have to avail statutory remedies against the order of assessment. According to the petitioner, he filed an appeal before the authority under the Faceless Appeal Scheme, 2021 along with an application for stay. It is the case of the petitioner that by virtue of the provisions contained in Section 249 of the 1961 Act, the Appellate Authority may have regard to the proviso to sub-section (4) of Section 249 of the 1961 Act exempt the petitioner from the requirement of paying the advance tax in cases where a return of income has not been filed by the petitioner / assessee. It is submitted that in the facts and circumstances of this case, a demand in the order of assessment (Ext.P15) is Rs.68 crores. It is submitted that for all the subsequent assessment years, including for the assessment year 2023-2024, the petitioner has filed a loss return and the same has been accepted along with an intimation under Section 143(1) of the 1961 Act. It is submitted that considering the aforesaid facts, the petitioner may be permitted to prosecute his appeal against Ext.P15 order of assessment without having to pay the advance tax in terms of the proviso to sub-section (4) of Section 249 of the 1961 Act.



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3. Sri.A.Kumar, the learned Senior Counsel appearing for the petitioner, on the instructions of Adv.G.Mini has referred to the provisions of Section 249 of the 1961 Act to contend that the case of the petitioner / assessee falls within Section 249(4)(b) of the 1961 Act and therefore, by the application of the proviso to that sub-section, the Appellate Authority is well within its powers to exempt the petitioner from payment of any amount as advance tax for maintaining the appeal.

4. The learned Standing Counsel appearing for the respondent Department would submit that the demand relates to the assessment year 2016-17. It is submitted that even in the year 2017-18, the petitioner has made substantial investments in immovable property while not filing a return of income or paying even the admitted tax in respect of the assessment year 2016-17. It is submitted that since the demand in Ext.P15 order of assessment is in excess of Rs.68 crores, even if the appellate authority were to consider the case as one covered by the proviso to Section 249(4)(b) of the 1961 Act, a substantial amount will have to be remitted by the petitioner for



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maintaining the appeal.

5. Having heard the learned Senior Counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent Department, I am of the view that since it is not seriously disputed that the case of the petitioner falls under the proviso Section 249(4)(b) of the 1961 Act, Ext.P17 appeal filed by the petitioner against Ext.P15 order of assessment for the assessment year 2016-17 can be directed to be disposed of on merits after affording an opportunity of hearing to the petitioner on the condition that the petitioner remits a total sum of Rs 12 crores against the demands in Ext.P15 order of assessment. An amount of Rs.11.75 crores shall be remitted by the petitioner in 8 equal monthly installments commencing from 15.04.2024. Subsequent installments shall be paid on or before the 15th day of the succeeding months. The petitioner shall remit a sum of Rs.25 lakhs towards the demand in Ext.P15 on or before 31.03.2024. If the petitioner fails to remit the amounts as directed above, it will be open to the Department to proceed for recovery of amounts assessed in terms of Ext.P15. Since the above condition is to be satisfied for maintaining the



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appeal, it is directed that the appeal filed by the petitioner shall be taken up and adjudicated only after the entire amounts (Rs 12 crores) payable by the petitioner in terms of this judgment are paid, as directed.

The writ petition will stand disposed of as above.

Sd/-
GOPINATH P.
JUDGE

DK



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APPENDIX OF WP(C) 10023/2024**PETITIONER EXHIBITS**

Exhibit P1	TRUE COPY OF THE ACKNOWLEDGEMENT OF THE RETURNS FILED FOR AY 2017-18 , DATED 31/03/2018.
Exhibit P2	TRUE COPY OF THE ACKNOWLEDGEMENT OF THE RETURNS FILED FOR AY 2018-19, DATED 30/10/2018
Exhibit P3	TRUE COPY OF THE ACKNOWLEDGEMENT OF THE RETURNS FILED FOR AY 2019-20, DATED 26/09/2020
Exhibit P4	TRUE COPY OF THE ACKNOWLEDGEMENT OF THE RETURNS FILED FOR AY 2020-21, DATED 29/03/2021
Exhibit P5	TRUE COPY OF THE ACKNOWLEDGEMENT OF THE RETURNS FILED FOR AY 2021-22, DATED 31/03/2022
Exhibit P6	TRUE COPY OF THE ACKNOWLEDGEMENT OF THE RETURNS FILED FOR AY 2022-23, DATED 23/12/2022
Exhibit P7	TRUE COPY OF THE ACKNOWLEDGEMENT OF THE RETURNS FILED FOR AY 2023-24, DATED 30/12/2023
Exhibit P8	TRUE COPY OF THE INTIMATION ORDER ISSUED UNDER SECTION 143(1) FOR THE RETURN FILED FOR AY 2017-18. DATED 28/06/2018
Exhibit P9	TRUE COPY OF THE INTIMATION ORDER ISSUED UNDER SECTION 143(1) FOR THE RETURN FILED FOR AY 2018-19. DATED 11/04/2019
Exhibit P10	TRUE COPY OF THE INTIMATION ORDER ISSUED UNDER SECTION 143(1) FOR THE RETURN FILED FOR AY 2019-20. DATED 04/10/2020
Exhibit P11	TRUE COPY OF THE INTIMATION ORDER ISSUED UNDER SECTION 143(1) FOR THE RETURN FILED FOR AY 2020-21. DATED 29/03/2021
Exhibit P12	TRUE COPY OF THE INTIMATION ORDER ISSUED UNDER SECTION 143(1) FOR THE RETURN FILED FOR AY 2021-22. DATED 31/03/2022



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Exhibit P13	TRUE COPY OF THE INTIMATION ORDER ISSUED UNDER SECTION 143(1) FOR THE RETURN FILED FOR AY 2022-23. DATED 23/12/2022
Exhibit P14	TRUE COPY OF THE INTIMATION ORDER ISSUED UNDER SECTION 143(1) FOR THE RETURN FILED FOR AY 2023-24. DATED 30/12/2023
Exhibit P15	TRUE COPY OF THE ASSESSMENT ORDER DATED 31.3.2022
Exhibit P16	TRUE COPY OF THE JUDGMENT IN WRIT PETITION(C) NO.13736 DATED 30.1.2024 OF THIS HON'BLE COURT.
Exhibit P17	TRUE COPY OF THE APPEAL MEMORANDUM DATED 19.2.2024 TOGETHER WITH THE ACKNOWLEDGEMENT
Exhibit P18	TRUE COPY OF THE APPLICATION FOR STAY DATED 19.2.2024.
Exhibit P19	TRUE COPY OF THE APPLICATION FOR EXEMPTION DATED NIL.
Exhibit P20	TRUE COPY OF THE COMMUNICATION DATED 6.3.2024 OF THE PETITIONER TO THE JOINT COMMISSIONER