2024:KER:8699

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945

WP(C) NO. 38347 OF 2023

PETITIONER:

MR. SHAM BASHEER,
AGED 52 YEARS, ASHIK MANZIL,
NEAR VIMAL HOSPITAL, ETTUMANOOR,
KOTTAYAM, KERALA, INDIA, PIN – 686631.

BY ADV.
SRI. K. LATHA

RESPONDENTS:

1 THE COMMISSIONER OF INCOME TAX (APPEALS) -3,
OFFICE OF THE COMMISSIONER OF INCOME TAX (APPEALS),
CIT (A), COCHIN, PIN – 682003.

2 INCOME TAX OFFICER,
WARD-4, OFFICE OF THE ASSISTANT COMMISSIONER
OF INCOME TAX, KOTTAYAM, PIN – 686001.

BY ADVS.
SRI. NAVANEETH N. NATH – SC – INCOME TAX
SRI. SUSIE B. VARGHESE – SENIOR SC – INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DINESH KUMAR SINGH, J.

W.P.(C) No. 38347 of 2023

Dated this the 1st day of February, 2024

JUDGMENT

1. The present writ petition has been filed by the petitioner who is an assessee under the provisions of the Income Tax Act, 1961. Against the assessment orders for the assessment years 2011-12 to 2014-15, the petitioner had filed appeals. The said appeals have been disposed of vide Exhibit P-2 series of orders.

2. The only ground which has been taken in the writ petition is that the petitioner was not afforded an opportunity of hearing and no communication for hearing was sent to the petitioner by the appellate authority before passing the impugned Exhibit P-2 series orders on petitioner's appeals against the assessment orders in Exhibit P-1 series. In response to the notice issued and directions passed by this Court in Orders dated 26.11.2023 and 30.11.2023, a statement has been filed on behalf of the respondents. According to the statement, petitioner has given as many as five e-mail ids as mentioned in paragraph 2 of the statement, which is extracted hereunder for perusal;

2. The following Email ids have been provided by the appellant at various stages (filing of returns, filing of appeals etc.) before the department and have been registered with the department. The details of such are given as under;

1	Primary Email id as per e-filing profile of Assessee	afcetmr@gmail.com
2	Secondary Email id as per e-filing profile of Assessee	jayson@sajuandco.com
3	Primary Email id as per Latest Return filed	shamafcetmr@yahoo.com
4	Secondary Email id as per Latest Return filed	jayson@sajuandco.com
5	Primary Email id as per ITR (Income Tax Return) of Assessment Year under consideration	shamafcetmv@yahoo.com
6	Secondary Email id as per ITR of Assessment Year under consideration	jayson@sajuandco.com
7	The email id provided in the Appeal Filing Petition (Form 35) for the Assessment Year 2011-12.	jayson@sajuandco.com

8	The email id provided in the Appeal Filing Petition (Form 35) for the Assessment Year 2012-13.	jayson@sajuandco.com
9	The email id provided in the Appeal Filing Petition (Form 35) for the Assessment Year 2013-14.	afcetmr@gmail.com
10	The email id provided in the Appeal Filing Petition (Form 35) for the Assessment Year 2014-15.	afcetmr@gmail.com
11	The email id provided in the Appeal Filing Petition (Form 35) for the Assessment Year 2017-18	middleeast132@gmail.com

3. It is further stated that the latest e-mail id given by the petitioner at the time of filing of appeal against the assessment order for the assessment year 2017-18 is '**middleeast132@gmail.com**'. The petitioner has been issued notices of hearing on the latest e-mail id as well as another e-mail id i.e. *shamafcetmr@yahoo.com* which is the latest e-mail id given in on the return for the latest assessment year and notices have been sent on the said e-mail id as is disclosed in

paragraph 3, wrongly numbered as 2 in the statement. It is further stated that in response to the appeal in respect of the assessment year where the e-mail id has been given as '**middleeast132@gmail.com**' petitioner has submitted online response on 30.01.2023. It is therefore submitted that the petitioner cannot turn around and say he did not receive any notices of hearing in respect of the appeals against assessment orders in Exhibit P-1 series when the petitioner himself has given the latest e-mail id as '**middleeast132@gmail.com**' and in response to the notice issued in the appeal against the assessment order for the assessment years 2017-18, the petitioner has replied and received the notice.

4. Ms. Latha K., learned Counsel for the petitioner however submits that in the returns the petitioner had given the e-mail id '**jayson@sajuandco.com**' and no communication has been sent on the said e-mail id to the petitioner. The e-mail id '**middleeast132@gmail.com**' is only given in the appeal filed against the assessment order for the assessment year 2017-18 and that appeal is still pending for consideration.

5. I have considered the submissions. It is not in dispute the all these e-mail ids which are mentioned in paragraph 2 of the statement have been given by the petitioner. The latest e-mail id given by the

petitioner in the appeal filed against the assessment order for the assessment year 2017-18 '**middleeast132@gmail.com**' on which the notices have been sent which is evident from paragraph 3 wrongly numbered as 2 in the statement. The petitioner had received the communications in respect of the appeal against the assessment order for the assessment year 2017-18 on the e-mail '**middleeast132@gmail.com**' and petitioner has also submitted response to the communication sent by the Department. Therefore, I am of the view that when the petitioner himself has given multiple e-mail ids and petitioner has responded to the notice issued on e-mail id '**middleeast132@gmail.com**' on which the several communications for hearing of the appeal were issued, I find the stand of the petitioner not tenable and, therefore, the writ petition is dismissed. However, if the petitioner is aggrieved by the impugned appellate orders in Exhibit P-2 series, the petitioner may file appeal before the Income Tax Appellate Tribunal, if he so advised.

Sd/-
DINESH KUMAR SINGH
JUDGE

Svn

APPENDIX OF WP(C) 38347/2023

PETITIONER'S EXHIBITS

EXHIBIT P1	TRUE COPY OF THE APPEAL IN FORM NO. 35 FILED BY THE PETITIONER AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2011-2012
EXHIBIT P1A	TRUE COPY OF THE APPEAL IN FORM NO. 35 FILED BY THE PETITIONER AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2012-2013
EXHIBIT P1B	TRUE COPY OF THE APPEAL IN FORM NO. 35 FILED BY THE PETITIONER AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2013-2014
EXHIBIT P1C	TRUE COPY OF THE APPEAL IN FORM NO. 35 FILED BY THE PETITIONER AGAINST THE ASSESSMENT ORDER FOR THE YEAR 2014-2015
EXHIBIT P2	TRUE COPY OF THE APPELLATE ORDER DATED 20TH SEPTEMBER 2023 ISSUED BY THE FIRST RESPONDENT APPELLATE AUTHORITY TO THE PETITIONER FOR THE YEAR 2011- 2012
EXHIBIT P2A	TRUE COPY OF THE APPELLATE ORDER DATED 20TH SEPTEMBER 2023 ISSUED BY THE FIRST RESPONDENT APPELLATE AUTHORITY TO THE PETITIONER FOR THE YEAR 2012- 2013
EXHIBIT P2B	TRUE COPY OF THE APPELLATE ORDER DATED 20TH SEPTEMBER 2023 ISSUED BY THE FIRST RESPONDENT APPELLATE AUTHORITY TO THE PETITIONER FOR THE YEAR 2013-2014
EXHIBIT P2C	TRUE COPY OF THE APPELLATE ORDER DATED 20TH SEPTEMBER 2023 ISSUED BY THE FIRST RESPONDENT APPELLATE AUTHORITY TO THE PETITIONER FOR THE YEAR 2014-2015
EXHIBIT P3	TRUE COPY OF THE SCREEN SHOT OF THE WEB PORTAL OF THE PETITIONER WRITING AS THE PETITIONER'S REGISTERED EMAIL ID AS AFCETMR@GMAIL.COM

EXHIBIT P4	TRUE COPY OF THE NOTICE/LETTER ABOUT EMAIL COMMUNICATIONS FOR THE YEAR 2011-2012 DATED 03.11- 2022, 16-11-2022, 19-01-2023, 11-08-2023 AND 05-09-2023
EXHIBIT P4A	TRUE COPY OF THE NOTICE/LETTER ABOUT EMAIL COMMUNICATIONS FOR THE YEAR 2012-2013 DATED 21-10-2022. 03-11- 2022, 16-11-2022, , 19-01-2023, 11-08-2023, AND 05-09-2023
EXHIBIT P4B	TRUE COPY OF THE NOTICE/LETTER ABOUT EMAIL COMMUNICATIONS FOR THE YEAR 2013-2014 DATED 21-10-2022. 15-11-2022, 16-11-2022, , 20-01-2023, 11-08- 2023, AND 05-09-2023
EXHIBIT P4C	TRUE COPY OF THE NOTICE/LETTER ABOUT EMAIL COMMUNICATIONS FOR THE YEAR 2014-2015 DATED 21-10-2022. 15-11-2022, 16-11-2022, , 20-01-2023, 11-08-2023, AND 05-09-2023