



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 22ND DAY OF JANUARY 2024 / 2ND MAGHA, 1945

WP(C) NO. 10407 OF 2023

PETITIONER:

ASSEENA BEEGAM MOHAMED ALI,
BEEVA ANACHAL, MANNAM P. O., NORTH PARUR,
ERNAKULAM, PIN - 683520.

BY ADVS.

SRI. HARISANKAR V. MENON
SMT. MEERA V. MENON
SRI. R. SREEJITH
SMT. K. KRISHNA
SMT. PARVATHY MENON

RESPONDENTS:

- 1 DEPUTY COMMISSIONER OF INCOME TAX,
INTERNATIONAL TAXATION CIRCLE, C. R. BUILDINGS,
I. S. PRESS ROAD, KOCHI, PIN - 682018.
- 2 DISPUTE RESOLUTION PANEL,
DRP-2, KENDRIYA SADAN, 4TH FLOOR,
A WING, KORAMANGALA, BANGALORE, PIN - 560034.

BY ADVS.

SRI. P. G. JAYASHANKAR
SRI. G. KEERTHIVAS GIRI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.****W.P.(C) No. 10407 of 2023**Dated this the 22nd day of January, 2024**JUDGMENT**

1. Petitioner is a Non Resident Indian and the petitioner is a eligible assessee under Section 144B of the Income Tax Act for finalising the assessment order. The petitioner filed return of her income for the assessment year 2014-15 on 13.08.2014 declaring the total income at Rs. 41,92,510/-.

2. A notice under Section 148 of the Income Tax Act followed by notices under Section 142 (1) were issued by the 1st respondent. Draft assessment order under Section 144C dated 19.03.2022 was served on the petitioner proposing to finalise the assessment by making additions against long term capital gains, in respect of the sale of the properties during the financial year relevant to the assessment year 2014-15. The note along with the draft assessment order would read as under;

“Note: Since the assessee is a non-resident, as per the provisions of Section 144C of the Income tAx Act, 1961, this draft assessment order is passed and is sent to the assessee for filing objections, if any, before the Dispute Resolution Panel within 30 days



form the receipt of this draft assessment order or accepting the adjustment(s) proposed by this draft assessment order. If either of these procedures is not complied with, it would be deemed as acceptance and the draft assessment order would become final and necessary order would be passed.”

3. The petitioner filed objection to the draft assessment order on 18.04.2022, well within the time of thirty days before the Dispute Resolution Panel (hereinafter referred to as 'DRP'). Under Section 144C (12) of the Income Tax Act, the DRP has nine months time to consider the objection and give direction to the assessing authority and, after the Dispute Resolution Panel issues direction on objection to the draft assessment of an assessee, the assessing authority is required to finalise assessment order as per direction of DRP within a period of thirty days from the end of the month.

4. While the Dispute Resolution Panel was still considering the objection to the draft assessment, the assessing authority has finalised the impugned assessment order on the ground that the petitioner had not filed objection to the draft assessment order. After the assessment authority has finalised the assessment order, the Dispute Resolution Panel had given direction in Exhibit P-4 dated 07.12.2022.



5. The learned Counsel for the petitioner submits that the finding recorded by the assessing authority in the impugned assessment order that no objection had been filed against the draft assessment order is against the record. In the notice issued to the petitioner along with the draft assessment order, the petitioner was required to file objection to the draft assessment order only before the Dispute Resolution Panel. There was no such direction to file objection before the assessing authority as well. It is further submitted that every pleading/document is available in the website as these are the online proceedings, and the objection filed by the petitioner to the draft assessment order was also available on the web portal. Therefore, the finding of the assessment authority that no objection was filed to the draft assessment order is palpably incorrect and against the law.

6. Mr. Keerthivas Giri, learned Standing Counsel for the Income Tax Department, on the other hand submits that Section 144C(2) mandates an assessee to file objection to the draft assessment order before the Dispute Resolution Panel as well as the assessing authority. It is therefore submitted that even if it was not mentioned in the notice to file objection before the assessing authority as well, it was incumbent on the petitioner/assessee to



have filed objection before the assessing authority as well. When there was no objection before the assessing authority, the assessing authority was of the opinion that no objection had been filed and, therefore, the final assessment order came to be passed.

7. I have considered the submissions. If the assessing authority who issued the notice himself did not mention that the objection to the draft assessment order was to be filed before the Dispute Resolution Panel as well as the assessing authority, presuming that the petitioner must have known that the objection was required to be filed before the assessing authority is a very high expectation by the assessing authority from the assessee. The objection to the draft assessment order was filed before the Dispute Resolution Panel, and the said objection must be available on the web portal and, therefore, the assessing authority recording that no objection was filed to the draft assessment order is incorrect. The assessing authority has proceeded in a highly technical manner. The Dispute Resolution Panel has already considered the objections and given direction in Exhibit P-4 to the assessing authority.

8. Mr. Keerthivas Giri, learned Standing Counsel for the Income Tax Department submits that the assessment order is appealable under the provisions of 246A of the Income Tax Act, and the



petitioner could have taken every objection to the assessment order before the appellate authority in the appeal. Instead of filing the statutory appeal, the petitioner has approached this Court under Article 226 of the Constitution of India. This writ petition is not even otherwise maintainable and liable to be dismissed on the ground of availability of alternative remedy.

9. In view of the facts set out, I am of the considered view that the impugned assessment order wherein the assessing authority had observed that no objection to the draft assessment order was filed by the assessing authority is palpably wrong. The assessment order gets vitiated for incorrect findings. I, therefore, set aside the assessment order and remand the matter back to the assessing authority to consider the direction issued by the Dispute Resolution Panel in Exhibit P-4 and pass a fresh assessment order in accordance with the law. Thus, the present writ petition is allowed in aforesaid terms.

**Sd/-
DINESH KUMAR SINGH
JUDGE**

Svn

**APPENDIX OF WP(C) 10407/2023****PETITIONER'S EXHIBITS**

EXHIBIT P1	COPY OF DRAFT ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2014-15 DTD. 19-03-2022
EXHIBIT P2	COPY OF OBJECTION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD. 13-04-2022
EXHIBIT P3	COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT DTD. 26-05-2022
EXHIBIT P4	COPY OF ORDER ISSUED BY THE 2ND RESPONDENT AS REGARDS EXT. P2 OBJECTION DTD. 09-12-2022
EXHIBIT P5	COPY OF RECTIFICATION REQUEST FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 08-02-2023
EXHIBIT P6	COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD. 14-02-2023
EXHIBIT P7	COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD. 25-02-2023
EXHIBIT P8	COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 26-05-2022
EXHIBIT P9	COPY OF LETTER ISSUED BY THE 1ST RESPONDENT DTD. 06-01-2023
EXHIBIT P10	COPY OF LETTER SUBMITTED BY THE PETITIONER'S CHARTERED ACCOUNTANT DTD. 09-02-2023