IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

WP(C) NO. 40532 OF 2024

PETITIONER :

KERALA MINERALS AND METALS LIMITED,
SANKARAMANGALAM,CHAVARA, KOLLAM,
PIN - 691583

BY ADVS.
SRI.JOSEPH MARKOS (SR.)
ABRAHAM JOSEPH MARKOS
JOHN VITHAYATHIL
ISAAC THOMAS
ALEXANDER JOSEPH MARKOS

RESPONDENTS :

1 THE ADDITIONAL/JOINT/DEPUTY/ASSISTANT
COMMISSIONER OF INCOME TAX,
INCOME TAX OFFICER, NATIONAL E-ASSESSMENT CENTRE,
NEW DELHI, PIN – 110 001

2 DEPUTY COMMISSIONER OF INCOME TAX,
INCOME TAX OFFICE, CIRCLE-1,
KOLLAM, PIN – 691 001

3 COMMISSIONER OF INCOME TAX (APPEALS),
INCOME TAX DEPARTMENT, NATIONAL FACELESS APPEAL CENTRE,
NEW DELHI, PIN - 110001

BY ADVS.
CHRISTOPHER ABRAHAM
P.R.AJITH KUMAR(K/000708/1998)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.
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W.P.(C) No.40532 of 2024
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Dated this the 27th day of January, 2025

JUDGMENT

Petitioner is a wholly owned Government company engaged in the business of extraction of minerals and manufacture of titanium dioxide and other products. Petitioner is also an assessee under the Income Tax Act, 1961 (for short, 'the Act'). For the assessment years 2014-15, 2016-17, 2017-18 and 2018-19, the returns of the petitioner were selected for scrutiny and the assessments were completed after disallowing certain claims.

2. Challenging the orders of assessment, petitioner filed separate appeals before the 3rd respondent as Ext.P2 and Ext.P2(a) to Ext.P2(c) series. Pursuant to notices issued under Section 250 of the Act, petitioner filed its respective submissions, wherein a specific request for personal hearing was sought in each of the appeals. However, without granting an opportunity of hearing, the appeals were dismissed by Ext.P5 and Ext.P5(a) to Ext.P5(c) orders. In one of the appeals relating to 2016-17 which is produced as Ext.P5(a), the appeal was dismissed for the reason that the assessment order had not been produced along with the memorandum of appeal. Other appeals were dismissed on merits. Aggrieved by the aforesaid orders of the Appellate Authority, petitioner

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has approached this Court under Article 226 of the Constitution of India mainly alleging violation of principle of natural justice.

3. I have heard Sri.Joseph Markos, the learned Senior Counsel, instructed by Sri.Alexander Joseph Markose, the learned counsel for the petitioner apart from Sri.Christopher Abraham, the learned Senior Standing Counsel for the Income Tax Department.

4. The appeal as relating to the year 2016-17 dismissed as per Ext.P5 (a), reveals that the Appellate Authority noticed that the assessment order was not produced along with the said appeal. However, it is not evident that, at the time of filing the appeal, any defect was noticed by the Appellate Authority regarding the absence of an assessment order. In fact, if there was any omission to produce the assessment order along with the appeal, certainly, the Appellate Authority ought to have noticed the said defect and given an opportunity to the appellant to produce the copy. Having not done so, it has to be assumed that the appeal in respect of the assessment year 2016-17 was filed properly along with the copy of the assessment order. Therefore the finding of the Appellate Authority that the appeal was filed without an assessment order cannot be accepted at this belated stage. The order of the Appellate Authority as relating to 2016-17 has not considered the issue on merits. Therefore, I am of the view that the petitioner cannot be put to prejudice at such a belated stage pointing out the absence of the assessment order especially in the absence of an omission to notice it at

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the point of first instance. Therefore Ext.P5(a) is liable to be set aside and a reconsideration ought to be directed.

5. As far as the remaining years are concerned, i.e. 2014-15, 2017-18 and 2018-19, the main contention as pointed out earlier is relating to the lack of an opportunity of hearing despite request. A perusal of the aforesaid orders which are produced as Ext.P5, Ext.P5(b) and Ext.P5(c) reveals that the petitioner was issued with notices repeatedly under Section 250 of the Act and on most of those occasions, there was a reply in the form of a submission, wherein a request for grant of an opportunity of hearing was sought by the petitioner. However, the learned Senior Standing Counsel for the respondents could not point out anywhere in the impugned order any reference about any opportunity of hearing granted. The learned Senior counsel for the petitioner, on the other hand asserted that, in fact no such opportunity was granted.

6. A glance at the impugned orders reveal that there is no reference, as rightly pointed out by the learned Senior counsel for the petitioner, to any opportunity of hearing having been granted. Undoubtedly, submissions referred to in the impugned orders indicate only written submissions in contradistinction to actual hearing. In such circumstances, I am satisfied that the impugned orders Ext.P5, Ext.P5(b) and Ext.P5(c) have been issued in violation of the principles of natural justice, entitling the petitioner to invoke the jurisdiction under Article 226 of the Constitution of India.

7. In view of the above discussion, I am satisfied that Ext.P5 series of orders are liable to be interfered with and a fresh consideration be directed.

In the result, Ext.P5, Ext.P5(a), Ext.P5(b) and Ext.P5(c) orders shall stand set aside and the 3rd respondent Appellate Authority shall hear the matter afresh and pass appropriate orders in accordance with law, after granting an opportunity of hearing to the petitioner, as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment. In order to avoid technicalities standing in the way of such consideration, petitioner shall produce a copy of the assessment order relating to the year 2016-17, along with the copy of this judgment, without delay.

The writ petition is allowed as above.

Sd/-
BECHU KURIAN THOMAS, JUDGE

RKM

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APPENDIX OF WP(C) 40532/2024

PETITIONER'S EXHIBITS :

Exhibit P1	**TRUE COPY OF THE ASSESSMENT ORDER DATED 30.12.2016 FOR ASSESSMENT YEAR 2014-15.**
Exhibit P1(a)	**TRUE COPY OF THE ASSESSMENT ORDER DATED 27.12.2018 FOR ASSESSMENT YEAR 2016-17**
Exhibit P1(b)	**TRUE COPY OF THE ASSESSMENT ORDER DATED 14.12.2019 FOR ASSESSMENT YEAR 2017-18**
Exhibit P1(c)	**TRUE COPY OF THE ASSESSMENT ORDER DATED 06.04.2021 FOR ASSESSMENT YEAR 2018-19**
Exhibit P2	**TRUE COPY OF APPEAL MEMORANDUM IN FORM NO.35 DATED 27.01.2017 FOR ASSESSMENT YEAR 2014-15 FILED BY THE PETITIONER BEFORE THE CIT (APPEALS) NOW THE 3RD RESPONDENT.**
Exhibit P2(a)	**TRUE COPY OF APPEAL MEMORANDUM IN FORM NO.35 DATED 25.01.2019 FOR ASSESSMENT YEAR 2016-17 FILED BY THE PETITIONER BEFORE THE CIT (APPEALS) NOW THE 3RD RESPONDENT.**
Exhibit P2(b)	**TRUE COPY OF APPEAL MEMORANDUM IN FORM NO.35 DATED 13.01.2020 FOR ASSESSMENT YEAR 2017-18 FILED BY THE PETITIONER BEFORE THE CIT (APPEALS) NOW THE 3RD RESPONDENT.**
Exhibit P2(c)	**TRUE COPY OF APPEAL MEMORANDUM IN FORM NO.35 DATED 07.05.2021 FOR ASSESSMENT YEAR 2018-19 FILED BY THE PETITIONER BEFORE THE CIT (APPEALS) NOW THE 3RD RESPONDENT.**
Exhibit P3	**TRUE COPY OF THE NOTICE DATED 12.04.2022 ISSUED UNDER SECTION 250 FOR ASSESSMENT YEAR 2014-15**
Exhibit P3(a)	**TRUE COPY OF THE NOTICE DATED 12.04.2022 ISSUED UNDER SECTION 250 FOR ASSESSMENT YEAR 2016-17.**
Exhibit P3(b)	**TRUE COPY OF THE NOTICE DATED 12.04.2022**

	ISSUED UNDER SECTION 250 FOR ASSESSMENT YEAR 2017-18.
Exhibit P3(c)	TRUE COPY OF THE NOTICE DATED 14.10.2022 ISSUED UNDER SECTION 250 FOR ASSESSMENT YEAR 2018-19.
Exhibit P4	TRUE COPY OF THE WRITTEN SUBMISSIONS DATED 12.04.2022 FOR ASSESSMENT YEAR 2014-15.
Exhibit P4(a)	TRUE COPY OF THE WRITTEN SUBMISSIONS DATED 31.05.2022 FOR ASSESSMENT YEAR 2016-17.
Exhibit P4(b)	TRUE COPY OF THE WRITTEN SUBMISSIONS DATED 29.08.2022 FOR ASSESSMENT YEAR 2017-18.
Exhibit P4(c)	TRUE COPY OF THE WRITTEN SUBMISSIONS DATED 10.11.2022 FOR ASSESSMENT YEAR 2018-19.
Exhibit P5	TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 19.09.2024 FOR ASSESSMENT YEAR 2014-15.
Exhibit P5(a)	TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 19.09.2024 FOR ASSESSMENT YEAR 2016-17.
Exhibit P5(b)	TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 19.09.2024 FOR ASSESSMENT YEAR 2017-18.
Exhibit P5(c)	TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 19.09.2024 FOR ASSESSMENT YEAR 2018-19.
Exhibit P6	TRUE COPY OF THE JUDGMENT DATED 07.06.2022 IN W.P.(C) NO.1734 OF 2022 PASSED BY THIS HONOURABLE COURT.