



2024:KER:71080

W.P (C) No.16401/2024

-1-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 24TH DAY OF SEPTEMBER 2024 / 2ND ASWINA, 1946

WP(C) NO. 16401 OF 2024

PETITIONER/S:

SMT. CELIN THOMAS,
AGED 65 YEARS
DOOR NO.294, WARD 1, ADUNGAMANGALAM, THIRUVANKULAM P.O,
ERNAKULAM, KERALA, PIN - 682305

BY ADVS.
ADITYA UNNIKRISHNAN
PRIYADARSINI S.

RESPONDENT/S:

THE INCOME TAX OFFICER,
NON CORP WARD 1(1), KOCHI- KERALA, PIN - 682018

OTHER PRESENT:

SRI. CYRIAC TOM (SC) . SRI JOSE JOSEPH (SR SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.09.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner has approached this court being aggrieved by the fact that proceedings for reassessment were initiated against late Thomas Bobby Cherian in respect of assessment year 2015-16 and an order under Section 148 A (d) of the Income Tax Act, 1961 ('the 1961 Act') was issued on 06-05-2022 in the name of late Thomas Bobby Cherian, after he had passed away on 14-06-2016.

2. The learned Standing Counsel appearing for the Income Tax Department refers to the statement filed and contends that the assessee late Thomas Bobby Cherian had not filed his return of income for the assessment year 2015-16. It is submitted that late Thomas Bobby Cherian had made two terms deposits of Rs.50 lakhs each with the erstwhile State Bank of Travancore, Erankulam during the financial year 2014-15 and in the absence of return of income for the year 2015-16 it was deemed that certain income chargeable to tax had escaped assessment within the meaning of Section 147 of 1961 Act and accordingly a show cause notice under Section 148A (b) of the 1961 Act was issued on 31-03-2022. It is submitted that since there was no response to the notice, an order under Section 148A (d) was issued. It is pointed out with reference to provisions of Section 159 (2) that the assessment could be continued against the representative assessee. It is pointed out that the issuance of an order under Section 148A (d) of the 1961



Act against the deceased assessee has not caused any prejudice to the petitioner.

3. Having heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the Income Tax Department, I am of the view that this writ petition is to be allowed. The procedure contemplated by Section 148A of the 1961 Act contemplates the issuance of a show cause notice etc., before reassessment proceedings are commenced. This cannot be a mere formality. Therefore the contention that the petitioner is not prejudiced cannot be accepted. Therefore this writ petition is disposed of permitting the competent authority to initiate fresh proceedings by issuance of notice under Section 148A (b) of the 1961 Act and concluding the proceedings against representative assessee (the petitioner) and to any other legal heir of late Thomas Bobby Cherian. I further make it clear that since the proceedings were commenced in the year 2022, for determining any period of limitation, the period from the date of which the initial notice under Section 148A (b) of the 1961 Act was issued till the date on which fresh notice is issued shall stand excluded. In order to enable the compliance with the aforesaid direction, Ext.P5 assessment order is quashed.

Sd/-
GOPINATH P.
JUDGE



APPENDIX OF WP(C) 16401/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF NOTICE DATED 3.12.2023
- Exhibit P2 TRUE COPY OF THE LETTER DATED 18.3.2024
- Exhibit P3 TRUE COPY OF SHOW CAUSE NOTICE DATED
25.3.2024
- Exhibit P4 TRUE COPY OF LETTER DATED 28.3.2024 SUBMITTED
BY THE PETITIONER
- Exhibit P5 TRUE COPY OF ASSESSMENT ORDER DATED
30.03.2024