



2024/KER/50725

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 4<sup>TH</sup> DAY OF JULY 2024 / 13TH ASHADHA, 1946

WP (C) NO. 16702 OF 2024

PETITIONER:

SRI.JOHNSON KOOMULLIL THOMAS,  
AGED 59 YEARS  
KOOMULLIL HOUSE, THALACODE P.O,  
MULANTHURUTHY, ERNAKULAM,  
KERALA, PIN - 682314

BY ADVS.  
ADITYA UNNIKRISHNAN  
PRIYADARSINI S.

RESPONDENT:

THE INCOME TAX OFFICER,  
WARD 1& TPS, MAHIMA TOWERS,  
TEMPLE ROAD, THODUPUZHA,  
KERALA, PIN - 685584  
R BY SR.SC SRI.JOSE JOSEPH  
R BY SC SRI.CYRIAC TOM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
04.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## **JUDGMENT**

The petitioner has filed this writ petition challenging Ext.P6 order passed by the respondent Assessing Officer under Section 148A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act,' for short).

2. The Assessing Officer issued Ext.P3 show cause notice under Clause (b) of Section 148A of the Act to the petitioner stating that the income chargeable to tax for the assessment year 2017-18 has escaped assessment and why a notice under Section 148 of the Act should not be issued. The petitioner submitted Ext.P4 reply. The petitioner was given an opportunity of hearing. The petitioner was



later served with Ext.P6 proceedings under Clause (d) of Section 148A of the Act asking the petitioner to file his return for the said year. The petitioner was also issued with Ext.P7 notice under Section 148 of the Act. The petitioner submits that Exts.P6 and P7 orders have been issued without jurisdiction as the impugned orders are not passed by the person who heard the petitioner. The petitioner also submits that the threshold of Rs. 50 lakhs has not been attained so as to invoke the extended period of limitation under Section 149 of the Act.

3. Section 148A provides that the Assessing Officer shall, before issuing any notice under section 148, conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income



chargeable to tax has escaped assessment; provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a); decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order. Opportunity of being heard to the assessee is explicit in the Section itself. The petitioner contends that Ext.P6 order been passed in violation of the principle 'he who decides must hear'.

4. Heard Sri. Anil D. Nair, the learned senior



counsel for the petitioner and Sri.Cyriac Tom, the learned Standing Counsel for the respondent.

5. Sri. Cyriac fairly submits that Ext.P6 order has been passed by the Assessing Officer who did not hear the petitioner.

6. The doctrine 'he who heard must decide / he who decides must hear' applies to statutory authorities. Section 148A of the Act provides for opportunity of being heard to the assessee. If the officer who hears does not render the decision, it would amount to violation of the principles of natural justice. Since Ext.P6 order is not passed by the Officer who heard the petitioner, Ext.P6 order is set aside. Consequently Ext.P7 notice under Section 148 is also set aside. The Assessing Officer shall pass fresh orders pursuant to Ext.P3 show cause notice



after affording an opportunity of hearing to the petitioner, as expeditiously as possible.

The writ petition is disposed of as above.

**Sd/-**  
**MURALI PURUSHOTHAMAN**  
**JUDGE**

SB



APPENDIX

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF NOTICE UNDER SEC.133(6) DATED  
6.12.2023

Exhibit P2 TRUE COPY OF THE REPLY DATED 09.01.2024

Exhibit P3 TRUE COPY OF THE NOTICE DATED  
29.01.2024 ISSUED UNDER SEC.148A(B)

Exhibit P4 TRUE COPY OF LETTER DATED 2.2.2024

Exhibit P5 TRUE COPY OF POSTING NOTICE DATED  
20.2.2024 ISSUED BY THE RESPONDENT

Exhibit P6 . TRUE COPY OF ORDER DATED 29.03.2024 UNDER  
CLAUSE (D) OF SECTION 148A

Exhibit P7 TRUE COPY OF THE NOTICE DATED  
30.03.2024 ISSUED UNDER SEC. 148 BY THE  
RESPONDENT