



2024:KER:71755

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 26TH DAY OF SEPTEMBER 2024 / 4TH ASWINA, 1946

WP(C) NO. 22380 OF 2024

PETITIONER:

THOTTUNGAL PADMANABHA DAS SUJITH,
AGED 48 YEARS
1/372 SUKANYA, YAKKARA JUNCTION, KINASSERY PO.,
PALAKKAD, PIN - 678 707.

BY ADVS.

K.KRISHNA
ACHYUTH MENON

RESPONDENT:

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

BY ADVS.

P.G.JAYASHANKAR (Sr.SC)
G.KEERTHIVAS (SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 26.09.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner has approached this Court challenging Ext.P6 order in reassessment proceedings for the assessment year 2018-2019 on a short ground.

2. It is the case of the petitioner that Ext.P5 show cause notice was issued only on 12-03-2024, calling upon the petitioner to submit his reply by 15-03-2024. It is submitted that Ext.P6 order was passed without having the benefit of any reply given by the petitioner on 20-03-2024. It is submitted that the haste in which the order was passed shows that the matter was not properly considered by the Assessing Authority. It is submitted that Ext.P6 order may therefore be set aside and the matter may be remanded to the Assessing Authority for fresh consideration after giving one final opportunity to the petitioner.

3. The learned Standing Counsel appearing for the Income Tax Department vehemently opposes the grant of relief to the petitioner. He refers to the impugned order as also to other documents produced along with the writ petition to show



that Ext.P5 was not the first show cause notice issued to the petitioner and it was actually the final show cause notice issued to the petitioner. It is submitted that various opportunities had been granted earlier to the petitioner and it cannot be said that Ext.P6 order was one issued in haste and without considering the reply filed by the petitioner. It is submitted that if the petitioner is in any way aggrieved by Ext.P6 order, it is for the petitioner to file an appeal before the First Appellate Authority and no ground has been made out for interference under Article 226 of the Constitution of India.

4. Having heard the learned counsel for the petitioner and the learned Standing Counsel for the Income Tax Department, I am of the view that the petitioner is entitled to succeed. While the learned Standing Counsel for the Income Tax Department may be right in contending that Ext.P5 was not the first opportunity given to the petitioner and several earlier opportunities have been given to the petitioner, it remains the fact that Ext.P5 was issued on 12-03-2024, giving only three days time to the petitioner to respond, and Ext.P6 order was issued on 20-03-2024. Though, in the light of the earlier opportunities given to the petitioner it cannot be said that



Ext.P6 was an order issued in haste, I am of the view that one final opportunity can be given to the petitioner to respond to Ext.P5 notice.

Accordingly, this writ petition will stand disposed of directing the Assessing Authority to complete the assessment after providing one last opportunity to the petitioner to respond to Ext.P5 notice and after affording an opportunity of hearing to the petitioner. To enable the reconsideration of the matter by the Assessing Authority, Ext.P6 order will stand set aside. I make it clear that I have not expressed any opinion on any contention taken by the petitioner on the merits of the matter, and it will be open to the Assessing Authority to pass fresh orders in accordance with the law.

**Sd/-
GOPINATH P.
JUDGE**

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APPENDIX OF WP(C) 22380/2024

PETITIONER'S EXHIBITS

- Exhibit P1 COPY OF NOTICE ISSUED BY THE RESPONDENT
DTD. 07-04-2022.
- Exhibit P2 COPY OF RETURN OF INCOME FILED BY THE
PETITIONER DTD. 03-05-2022.
- Exhibit P3 COPY OF NOTICE ISSUED BY THE RESPONDENT
DTD. 18-02-2023.
- Exhibit P3 (a) COPY OF NOTICE ISSUED BY THE RESPONDENT
DTD. 18-07-2023.
- Exhibit P3 (b) COPY OF NOTICE ISSUED BY THE RESPONDENT
DTD. 15-09-2023.
- Exhibit P3 (c) COPY OF NOTICE ISSUED BY THE RESPONDENT
DTD. 01-11-2023.
- Exhibit P4 COPY OF REPLY FILED BY THE PETITIONER
BEFORE THE RESPONDENT DTD. 16-03-2023.
- Exhibit P4 (a) COPY OF REPLY FILED BY THE PETITIONER
BEFORE THE RESPONDENT DTD. 14-08-2023.
- Exhibit P4 (b) COPY OF REPLY FILED BY THE PETITIONER
BEFORE THE RESPONDENT DTD. 15-09-2023.
- Exhibit P4 (c) COPY OF REPLY FILED BY THE PETITIONER
BEFORE THE RESPONDENT DTD. 08-11-2023.
- Exhibit P5 COPY OF SHOW CAUSE NOTICE ISSUED BY THE
RESPONDENT DTD. 12-03-2024.
- Exhibit P6 COPY OF ASSESSMENT ORDER ISSUED BY THE
RESPONDENT FOR THE YEAR 2018-19 DTD. 20-03-
2024.
- Exhibit P7 COPY OF JUDGMENT IN WPC NO. 11311/2022 OF
THIS HON'BLE COURT DTD. 14-07-2022.