

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944

WP(C) NO. 11456 OF 2022

PETITIONER:

K.VISWANATH
AGED 64 YEARS
XHOUSE NO 34/572, PADIVATTOM,
ERNAKULAM, COCHIN- 682 024

BY ADV TOMSON T.EMMANUEL

RESPONDENTS:

- 1 DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 1 (1), CENTRAL REVENUE BUILDING,
I S PRESS ROAD, COCHIN 682 018
- 2 PRINCIPAL COMMISSIONER OF INCOME TAX-1
INCOME TAX DEPARTMENT, CENTRAL REVENUE BUILDING,
IS PRESS ROAD, COCHIN -682 018
- 3 THE UNION OF INDIA
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE),
NORTH BLOCK, NEW DELHI - 110 001.
REPRESENTED BY THE SECRETARY.

BY ADV SHRI.B.RAMACHANDRAN, CGC

OTHER PRESENT:

ADV. CHRISTOPHER ABRAHAM (SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner has approached this Court being aggrieved by Ext.P5 order issued under the provisions of Section 148 A of the Income Tax Act, 1961.

2. It is the case of the petitioner that pursuant to Ext.P3 notice issued to the petitioner, the petitioner had filed Ext.P4 reply and also sought for personal hearing. It is submitted that provisions of Section 148 A of the Income Tax Act, 1961 contemplates that the reply of the petitioner shall be considered and the petitioner shall be heard before the officer, decides to proceed to the step of issuing notice under Section 148 of the Income Tax Act. It is submitted that the procedure has not been complied within this case and Ext.P5 order has been issued without affording to the petitioner an opportunity of being heard.

3. The learned Standing Counsel appearing for the respondent department points out that the petitioner will get a full opportunity after the notice is issued under Section 148 A of the Income Tax Act and there is absolutely no prejudice caused to the petitioner in the issuance of Ext.P5

order, even assuming without conceding that the same was issued without following prescribed procedure.

4. Having heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent department and on a reading of Section 148 A of the Income Tax Act, 1961, I am of the opinion that before the officer proceeds the stage of issuance of notice under Section 148 of the Income Tax Act, he has to comply with the procedure contemplated by Section 148 A of the Income Tax Act. Ext.P5 does not show that the petitioner was afforded an opportunity of personal hearing before the order was issued. The provisions of Section 148 A(b) indicate that an order can be issued only after affording an opportunity of hearing. Therefore Ext.P5 is quashed. The matter is remanded to the file of the 1st respondent, who shall issue fresh orders after following the procedure contemplated by Section 148A(b) of the Income Tax Act and also after affording to the petitioner an opportunity of being heard. The petitioner shall appear before the 1st respondent at 11 A.M. on 21-11-2022. The 1st respondent shall thereafter hear the petitioner and take a fresh decision after considering the reply and any document

produced by the petitioner in response to Ext.P3 notice,
within a period of one month from 21-11-2022.

The writ petition is disposed of as above.

**Sd/-
GOPINATH P.
JUDGE**

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APPENDIX OF WP(C) 11456/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF TAX INVOICE NO HT/P/OCT/28/001 DATED 28-10-2017 ISSUED BY M/S. HETVI TRADING LLP, SURAT FOR INTERSTATE PURCHASE OF CUT AND POLISHED DIAMOND
- Exhibit P2 TRUE COPY OF INCOME TAX RETURN SUBMITTED ON 10-10-2018 BY THE PETITIONER FOR AY 2018-19 ALONG WITH STATEMENT OF INCOME TAX
- Exhibit P3 TRUE COPY OF NOTICE UNDER CLAUSE (B) OF SEC. 148A OF INCOME TAX ACT ISSUED BY 1ST RESPONDENT FOR AY 2018-19
- Exhibit P4 TRUE COPY OF REPLY DATED 10-03-2022 SUBMITTED UNDER IN THE ONLINE ONLINE PORTAL, AGAINST EXT P3 NOTICE, WITH A REQUEST FOR PERSONAL HEARING
- Exhibit P4A TRUE COPY OF RELEVANT PAGE OF AUDITED TRADING PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31-03-2018 ATTACHED ALONG WITH EXT P4 REPLY
- Exhibit P4B TRUE COPY OF BANK STATEMENT ATTACHED ALONG WITH EXT P4 REPLY TOWARDS PAYMENT MADE BY PTGS AGAINST EXT P1 TAX INVOICE
- Exhibit P4C TRUE COPY OF LEDGER ACCOUNT MAINTAINED WITH THE SUPPLIER AGAINST EXT P1 PURCHASE, ATTACHED ALONG WITH EXT P4 REPLY
- Exhibit P4D TRUE COPY OF LEDGER ACCOUNT FOR 3% INTERSTATE PURCHASE, ATTACHED ALONG WITH EXT P4 REPLY
- Exhibit P5 TRUE COPY OF ORDER UNDER CLAUSE (D) OF SEC. 148A OF INCOME TAX ACT PASSED BY 1ST RESPONDENT, MECHANICALLY, WITHOUT AFFORDING PERSONAL HEARING.
- Exhibit P6 TRUE COPY OF DECISION REPORTED IN (2010) 320 ITR 561 PASSED BY SUPREME COURT IN COMMISSIONER OF INCOME TAX VS. KELVINATOR OF INDIA LTD, IN DISMISSING THE APPEAL FILED BY THE DEPARTMENT FOR WANT OF TANGIBLE MATERIAL

FOR THE FORAMTION OF THE VELIEF