

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 25<sup>TH</sup> DAY OF NOVEMBER 2022 / 4TH AGRAHAYANA, 1944

WP (C) NO. 18182 OF 2022

**PETITIONER:**

NAMBIAR BALAKRISHNAN NARENDRAN  
AGED 62 YEARS  
SATHYENDRAM, NEAR GANDHI MAIDAN, PAYYANNUR P. O.,  
TALIPARAMBA, KANNUR - 670307.

BY ADV S.ARUN RAJ

**RESPONDENTS :**

- 1 THE INCOME TAX OFFICER,  
WARD - 3, AAYAKAR BHAVAN, KANNUR - 670 006.
- 2 THE PRINCIPAL COMMISSIONER OF INCOME TAX  
AAYAKAR BHAVAN, MANANCHIRA, KOZHIKODE - 673001.

ADV. CHRISTOPHER ABRAHAM (SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
25.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner has approached this Court being aggrieved by the fact that proceedings were taken against him under Section 148 of the Income Tax Act, 1961 ('the Act' for short) without following the procedure contemplated by the provisions of Section 148A of the Act. It is the case of the petitioner that after amendment to the provisions of Income Tax Act in the year 2021 [by the Finance Act of 2021] before reassessment proceedings are initiated under Section 148 of the Act, it was incumbent on the officer to serve a show cause notice as contemplated by Section 148A of the Act. It was also pointed out that a minimum of seven days is to be given to the petitioner to reply to the same. The learned counsel for the petitioner submits that the notice under Section 148A of the Act was not actually served on the petitioner prior to the issuance of notice under Section 148 of the Act and the notice under Section 148A of the Act was subsequently served by messenger. It is submitted that the petitioner did not get any time to respond to the notice under Section 148A of the Act and therefore, the proceedings initiated against the petitioner under Section 148 of the Act

are incompetent and contrary to law.

2. The learned Standing Counsel appearing for the respondent Department refers to the counter affidavit filed by the 1<sup>st</sup> respondent in this case where in paragraph 7 it is stated as follows:

*"However, in view of the contention of the petitioner regarding the correctness of the information relied by the Revenue as referred to in para.6 above, it is prayed that the Revenue may kindly be permitted to issue a fresh notice u/s 148A to verify the above facts and take further steps in this matter as provided under law."*

In response to the averment to the petitioner that the notice under Section 148A of the Act was never served on the petitioner before the issuance of notice under Section 148 of the Act, it is stated in paragraph 5 of the counter affidavit as under:

*"In response to the above averments of the petitioner, this deponent submits as under. Notice u/s 148 A(b) was issued on 18.03.2022 allowing time upto 24.03.2022 to the assessee to respond to the notice. This means that including the date of issue of the notice, 7 days time was allowed to the assessee to respond to the notice. Therefore the contention raised in this regard by the petitioner is not correct. However, as per the details available in the system, delivery of notice u/s 148 A(b) issued on*

*18.03.2022 is not verifiable and therefore electronic delivery of notice cannot be proved. Though a hard copy of the notice was also sent by post, it was returned undelivered"*

It is in these circumstances, that the 1<sup>st</sup> respondent has stated that the Department may be permitted to issue fresh notice under Section 148A of the Act and continue with the proceedings in due compliance with the law.

3. The learned counsel for the petitioner states that this Court may not grant any permission to the respondent Department to continue with the fresh proceedings contemplated and the fresh proceedings may be permitted only if they are authorized by law. Since it is clear that there is no record to suggest that the procedure contemplated u/s 148A of the Act were followed before issuing notice under Section 148 of the Act, this writ petition is allowed. Exts.P1 and P4 are quashed without prejudice to the right of the Department to initiate fresh proceedings in accordance with law.

Sd/-  
**GOPINATH P.**  
**JUDGE**

**APPENDIX OF WP(C) 18182/2022**

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTICE DATED 18-3-2022 UNDER SECTION 148A(B) OF THE ACT FOR THE AY 2018-19 OF THE 1ST RESPONDENT WHICH WAS GIVEN BY HAND ON 18-4-2022.
- Exhibit P2 TRUE COPY OF THE SMS ALERT RECEIVED IN THE MOBILE PHONE FROM THE INCOME TAX DEPARTMENT ON 25-4-2022.
- Exhibit P3 TRUE COPY OF THE ORDER DATED 30-3-2022 OF THE 1ST RESPONDENT U/S 148A(D) OF THE ACT FOR THE AY 2018-19 UPLOADED ON 25-4-2022 IN THE INCOME TAX WEB PORTAL ACCOUNT.
- Exhibit P4 TRUE COPY OF THE NOTICE DATED 30-3-2022 OF THE 1ST RESPONDENT U/S 148 OF THE ACT FOR THE AY 2018-19 UPLOADED ON 25-4-2022 IN THE INCOME TAX WEB PORTAL ACCOUNT.
- Exhibit P5 TRUE COPY OF THE LETTER DATED 26-4-2022 SENT BY THE PETITIONER TO THE 1ST RESPONDENT FOR THE AY 2018-19.
- Exhibit P6 TRUE COPY OF THE JUDGMENT DATED 12-5-2022 IN WP(C) NO. 7385 OF 2022 PASSED BY THE HIGH COURT OF DELHI.
- Exhibit P7 TRUE COPY OF THE NOTIFICATION NO. 2/2016 DATED 3-2-2016 ISSUED BY THE CENTRAL BOARD OF DIRECT TAXES, NEW DELHI.