



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 13TH DAY OF OCTOBER 2023 / 21ST ASWINA, 1945

WP(C) NO. 33743 OF 2023

PETITIONER:

PUNATHIL NISHRIYA
AGED 45 YEARS
D/O PUNATHIL MUHAMMED, HANAWHEELS, NEAR AYYAPPA TEMPLE,
KALPETTA WAYANAD KERALA, PIN - 673 121.

BY ADVS.
G.KEERTHIVAS
LAKSHMI DAS

RESPONDENTS:

- 1 INCOME TAX OFFICER
WARD NO.1, KALPETTA, PIN - 673 122.
- 2 COMMISSIONER OF INCOME TAX (APPEALS)
AYAKAR BHAVAN, KOZHIKODE DISTRICT, PIN - 673 001.
- 3 NATIONAL FACELESS APPEALS CENTRE
REPRESENTED BY PRINCIPAL CHIEF COMMISSIONER OF INCOME
TAX (NFAC), C-BLOCK, SPM CIVIC CENTRE, NEW DELHI,
PIN - 110 001.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13.10.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**DINESH KUMAR SINGH, J.**-----
W.P.(C). No. 33743 of 2023
-----Dated this the 13th day of October, 2023.**JUDGMENT**

The present writ petition has been filed impugning Ext.P4 order dated 20.07.2023 and seeking a direction to the 1st respondent to reconsider Ext.P3 stay application. A writ of mandamus was also sought for to respondent Nos. 2 and 3 to consider and dispose of Exhibit P2 statutory appeal expeditiously within a time frame to be fixed by this Court.

2. In ***Principal Commissioner of Income Tax v. LG Electronics India Private Limited*** [Order dated 20.07.2018 in Civil Appeal No. 6850 of 2018], the Apex Court has held as follows:

“2. Having heard Shri.Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal.”

3. In that view of the matter, this writ petition is disposed of with a direction to the appellate authority to consider Exhibit P3 stay application on its merit, keeping in view Exhibits P5 to P7 Office



2023:KER:62853

W.P.(C) No. 33743/2023

: 3 :

Memorandums issued by Central Board of Direct Taxes as well as the decision of the Apex Court in ***M/s. LG Electronics India Private Limited*** (cited supra).

Writ petition stands finally disposed of.

sd/-
DINESH KUMAR SINGH,
JUDGE.

Rv



APPENDIX OF WP(C) 33743/2023

PETITIONER'S EXHIBITS :

- | | |
|------------|--|
| Exhibit P1 | TRUE COPY OF THE ASSESSMENT ORDER ALONG WITH DEMAND NOTICES DATED 31.3.2023 ISSUED BY THE 1ST RESPONDENT |
| Exhibit P2 | TRUE COPY OF THE STATUTORY APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT CIT(A) DATED 26.4.2023 |
| Exhibit P3 | TRUE COPY OF THE STAY APPLICATION DATED 26.6.2023 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT |
| Exhibit P4 | TRUE COPY OF THE NOTICE DATED 20.7.2023 |
| Exhibit P5 | TRUE COPY OF THE OFFICE MEMORANDUM DATED 31.7.2017 ISSUED BY THE CENTRAL BOARD OF DIRECT TAXES |
| Exhibit P6 | TRUE COPY OF THE OFFICE MEMORANDUM DATED 29.2.2016 ISSUED BY THE CENTRAL BOARD OF DIRECT TAXES |
| Exhibit P7 | TRUE COPY OF THE INSTRUCTION NO.1914 |

RESPONDENTS' EXHIBITS: NIL

True Copy

PS To Judge.