



2025:KER:13939

WA NO. 712 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 18TH DAY OF FEBRUARY 2025 / 29TH MAGHA, 1946

WA NO. 712 OF 2023

AGAINST THE JUDGMENT DATED 9.3.2023 IN WP(C) NO.26900
OF 2022 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

AANJALY SANDEEP SHETTY
AGED 37 YEARS, BAJAJ EXOTICA APARTMENTS, B BLOCK
1006, OPP. MORE SUPERMARKET, MANAGALORE, PIN -
575005

BY ADVS.
PREMJIT NAGENDRAN
P.RAGHUNATHAN - K/249/1974
RISHAL.K - K/912/2015

RESPONDENT/RESPONDENT:

ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER
OF INCOME TAX/INCOME TAX OFFICER
NATIONAL FACELESS ASSESSMENT CENTRE, DELHI, PIN
- 110001

BY ADVS.
CHRISTOPHER ABRAHAM
P.R.AJITH KUMAR(K/000708/1998)
SRI.JOSE JOSEPH



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THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
18.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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J U D G M E N TEaswaran S., J.

This intra-court appeal is preferred by the petitioner aggrieved by the dismissal of WP(C) No.26900/2022. The short question that arises for consideration in the appeal is whether the order of assessment under the provisions of the Income Tax Act, 1961 issued by the Assistant Commissioner of Income Tax was open to challenge for violation of the principles of natural justice.

2. The pleadings in the writ petition show that the petitioner was informed by the Income Tax Authorities regarding the tax arrears against her for the assessment year 2017-18 through a written communication referring to an assessment order dated 15.3.2022, which is alleged to have been served through e-mail. The petitioner further contended that on logging onto the web portal of the Income Tax Department, the petitioner came to know that the order of assessment was passed on 24.3.2022. It is asserted that the petitioner was not served with any communication regarding the draft assessment order. Therefore, complaining that the completion of assessment is against the provisions of Section 144B of the Income Tax Act, the petitioner approached this Court in the writ petition.



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3. A counter affidavit had been filed on behalf of the respondent pointing out that as per the user e-filing profile data base of the petitioner, the primary mobile number registered by the petitioner was 8589074740 and the primary e-mail id registered was raseenakr@rediffmail.com and the secondary e-mail id was reghunath-associates@hotmail.com. Producing the copy of the profile administration, it was further contended that notice under Section 148 was issued electronically and delivered to the registered e-mail id, reghunath-associates@hotmail.com, and an SMS alert was triggered by the system. Details taken from the e-filing web manager received from the Deputy Director of Income Tax were also produced. Still further, it is pointed out that copies of the notices issued through speed post and the postal track record were also produced to evidence the service of notice. Therefore, it was contended that as alleged, there is no violation of the principles of natural justice.

4. The learned Single Judge, who considered the writ petition, found that the question raised in the writ petition falls within the realm of disputed questions of fact, which cannot be adjudicated in a writ petition under Article 226 of the Constitution of India. Thus, the learned Single Judge refused to exercise the



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discretion and entertain the writ petition and directed the petitioner to approach the statutory authority with an appeal within a period of two weeks from the date of the judgment.

5. Before us, the appellant contends that the findings of the learned Single Judge are erroneous, inasmuch as the learned Single Judge failed to consider the question of violation of the principles of natural justice in the correct perspective. It is further contended that it is now settled law that if there is a violation of the principles of natural justice, notwithstanding the availability of the alternate remedy, writ petition is maintainable.

6. We have heard Sri.Premjith Nagendran, the learned counsel appearing for the appellant, and Sri.Jose Joseph, the learned counsel appearing for the respondent.

7. On consideration of the rival submissions raised across the bar, we are of the view that there is no merit in the contentions raised by the writ appellant. As rightly observed by the learned Single Judge, the question as to whether there was a proper notice or not is certainly a disputed question of fact, which cannot be gone into in a proceedings under Article 226 of the Constitution of India.



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8. Hence, we see no reason as to why we should interfere with the judgment of the learned Single Judge. Accordingly, the appeal lacks merit and the same is dismissed.

Before parting, we might observe that this Court by order dated 24.5.2023 had admitted the appeal and granted interim stay of all further proceedings pursuant to Ext.P2. Since, we have declined to interfere with the judgment of the learned Single Judge, necessarily, the appellant/petitioner will have to resort to the alternate remedy of preferring an appeal. Thus, we permit the appellant to file the appeal against the assessment order within a period of one month from the date of receipt of a copy of this judgment, and in such event, the appellate authority shall treat the appeal as one filed within the time and decide the same on merits, in accordance with law, after hearing the parties.

Sd/-
DR.A.K.JAYASANKARAN NAMBIAR,
JUDGE

Sd/-
EASWARAN S.,
JUDGE



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APPENDIX OF WA 712/2023

PETITIONER ANNEXURES

Annexure A	COPY OF NOTICE ISSUED BY THE INCOME TAX OFFICER, KOZHIKODE DTD. 31-03-2021
ANNEXURE B	COPY OF NOTICE ISSUED BY THE INCOME TAX DEPARTMENT, CIRCLE 1 (1) & TPS, KOZHIKODE DTD. 15-11-2021
ANNEXURE C	COPY OF NOTICE ISSUED BY THE RESPONDENT DTD. 16-12-2021