IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

Con.Case(C).No. 423 of 2015 (S) IN WP(C).31005/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 31005/2013 of HIGH COURT OF KERALA DATED 20-12-2013

PETITIONER(S)/PETITIONER IN WPC :

PANDARATHIPARAMBU MOHAMMED ASHRAF AGED 42 YEARS
S/O. MUHAMMED, HOUSE NO.IX/1485, EDACHIRA
THENGODU POST, KAKKANADU, PIN-682 021.

BY ADV. SRI.BABU CHERUKARA

RESPONDENT(S)/1ST RESPONDENT IN WPC :

RAVI.S., AGED 50 YEARS
FATHER'S/MOTHER'S NAME IS NOT KNOWN TO THE PETITIONER
THE COMMISSIONER OF INCOME TAX, CPC POST BAG NO.1
ELECTRONIC CITY POST OFFICE, BANGALURU, PIN-560 100.

R. BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 09-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

COC 423 of 2015

APPENDIX

PETITIONER'S ANNEXURE :

ANNEXURE A1 - CERTIFIED COPY OF THE JUDGMENT IN W.P.(C) NO. 31005 OF 2013 DATED 20.12.2013 OF THE HONOURABLE HIGH COURT OF KERALA.

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON J.

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Cont. Case (C) No. 423 of 2015

against

W.P.(C) No. 31005 of 2013

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Dated, this the 9th day of September, 2015

JUDGMENT

The writ petition filed by the petitioner was disposed of in the following terms :

> "After hearing both the sides, the writ petition is disposed of, directing the first respondent to consider and pass appropriate orders on Ext. P1 application in accordance with law after giving an opportunity of hearing to the petitioner, at the earliest, at any rate, within 'two months' from the date of receipt of a copy of this judgment. It is made clear that, this Court has not expressed anything with regard to the merits involved or as to the eligibility of the petitioner to have the amount disbursed, which is to be considered by the first respondent."

2. Alleging non compliance of the direction given by this Court, the petitioner is before this Court by way of this contempt of court case.

3. Sri. Jose Joseph, the learned counsel appearing on behalf of the respondent submits that the petition itself is bad for non-jointer

of necessary parties. It is stated that the respondent by name 'Ravi' was at no time was working as the Commissioner and as such, no case will lie against the said respondent. With regard to the merits of the case, the learned counsel submits that earnest efforts were taken to consider the matter pursuant to the direction given by this Court and the relevant aspects noted were intimated to the assessee then and there. The version of the respondent, as discernible from paragraph 5 (iii) and (iv) of the statement dated 28.05.2015 is relevant, which reads as follows :

> "(iii) It is humbly submitted that on receipt of the Hon'ble High Court's order, the electronic return filed by the assessee for Asst. Year 2013-14 was taken up for processing. However the return was found to contain certain inconsistencies as mentioned below:
>
> (a) The assesssee had filed the Income tax return in Form ITR-4S. The instructions contained in the said form clearly mention that the assesses having capital gains cannot use this Form. Further if tehre are any exempt income the relevant schedules need to be filed. In this particular case, where the assessee had received compensation for compulsory acquisition of the land, the income was in the nature of Capital Gains and this information was not duly captured in the

return, though the asessee was claiming the TDS credits for the same. Also, the TDS claim was not commensurate with the details of the income provided in the return.

(b) From the TDS credits, details of which were available in the system, the TDS was effected u/s 194LA of the Income Tax Act, 1961 which is applicable in case of compensation received on account of compulsory acquisition of immovable property other than agricultural land. However it was not possible for the system to identify whether the amount is exempt income or not as the assessee had not filed the relevant schedules of Exempt Income. Thus there are inconsistencies in the details provided in the return as explained in the previous and this paragraph.

(iv) Due to the above inconsistencies, the return was not found to be processable at CPC. Accordingly, it was decided to transfer the return to the jurisdictional assessing officer for further necessary action in accordance with clause 8 (iii) of the Centralised Processing Of Returns Scheme 2011 referred to above. However, due to a Database migration and technical upgradation related activity being carried on the by the Department which was

> scheduled in the month of May 2014, the transfer of the electronic return could not be effected immediately. However after the Database Migration was completed, the return was transferred to assessing officer and a communication in this regard was also sent to the assessee on 05.06.2014 vide E-mail. Once the return is transferred to the jurisdictional assessing officer, the Centre has no jurisdiction over the processing matter."

4. Considering the facts and circumstances, this Court finds that there is no contumacious act on the part of the respondent so as to proceed with further steps in this case. It is for the petitioner to pursue further steps as intimated to the petitioner on 05.06.2014. Without prejudice to the rights and liberties in this regard, the contempt matter stands closed.

Sd/-

P. R. RAMACHANDRA MENON,
(JUDGE)

kmd