IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 4282 of 2015 (I)

PETITIONER(S):

DR.HAFEEZ REHMAN PADIYATH,
CRYSTAL GARDEN VILLA, THRIKKAKARA,
KOLLANKUDIMUGAL, KAKKANAD

BY ADVS.SRI.ANIL D. NAIR
SMT.C.S.SULEKHA BEEVI
SRI.R.SREEJITH
SMT.ROSIE ATHULYA JOSEPH
KUM.SOUMYA PRAKASH
SMT.MANEESHA KUMAR

RESPONDENT(S):

----

1. THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE II, ERNAKULAM - 682 018.

2. THE ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE II,ERNAKULAM - 682 018.

3. THE COMMISSIONER OF INCOME TAX (APPEALS)-I,
ERNAKULAM - 682 018.

BY SRI.JOSE JOSEPH, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-02-2015, ALONG WITH WP(C) NO.4299/2015 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 4282 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE ASSESSMENT ORDER DATED 30-12-2011 FOR THE A.Y 2004-05 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P1(A) TRUE COPY OF THE ASSESSMENT ORDER DATED 30-12-2011 FOR THE A.Y 2005-06 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P1(B) TRUE COPY OF THE ASSESSMENT ORDER DATED 30-12-2011 FOR THE A.Y 2006-07 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P1(C) TRUE COPY OF THE ASSESSMENT ORDER DATED 30-12-2011 FOR THE A.Y 2007-08 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P1(D) TRUE COPY OF THE ASSESSMENT ORDER DATED 30-12-2011 FOR THE A.Y 2008-09 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P1(E) TRUE COPY OF THE ASSESSMENT ORDER DATED 30-12-2011 FOR THE A.Y 2009-10 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P1(F) TRUE COPY OF THE ASSESSMENT ORDER DATED 30-12-2011 FOR THE A.Y 2010-11 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P2 TRUE COPY OF THE APPEAL DATED 28-01-2012 FOR THE A.Y 2004-05 FILED BEFORE THE 3RD RESPONDENT.

EXHBIIT P2(A) TRUE COPY OF THE APPEAL DATED 28-01-2012 FOR THE A.Y 2005-06 FILED BEFORE THE 3RD RESPONDENT.

EXHBIIT P2(B) TRUE COPY OF THE APPEAL DATED 28-01-2012 FOR THE A.Y 2006-07 FILED BEFORE THE 3RD RESPONDENT.

EXHIBIT P2(C) TRUE COPY OF THE APPEAL DATED 28-01-2012 FOR THE A.Y 2007-08 FILED BEFORE THE 3RD RESPONDENT.

EXHIBIT P2(D) TRUE COPY OF THE APPEAL DATED 28-01-2012 FOR THE A.Y 2008-09 FILED BEFORE THE 3RD RESPONDENT.

EXHIBIT P2(E) TRUE COPY OF THE APPEAL DATED 28-01-2012 FOR THE A.Y 2000-10 FILED BEFORE THE 3RD RESPONDENT.

EXHIBIT P2(F) TRUE COPY OF THE APPEAL DATED 28-01-2012 FOR THE A.Y 2010-11 FILED BEFORE THE 3RD RESPONDENT.

EXHIBIT P3 TRUE COPY OF THE PETITION FOR STAY OF COLLECTION DATED 19-03-2012 FILED BEFORE THE ADDL. COMMISSIONER OF IT.

EXHIBIT P4 TRUE COPY OF THE ORDER DATED 01-05-2012 ISSUED BY THE 1ST RESPONDENT.

Msv/

WP(C).No. 4282 of 2015 (I)

EXHIBIT P5 TRUE COPY OF THE NOTICE DATED 24-03-2014 ISSUED BY THE 2ND RESPONDENT (A YS. 2004-05 TO 2010-11) TO THE PETITIONER.

EXHIBIT P6 TRUE COPY OF THE LETTER,DATED 31-03-2014 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT (FOR THE A.YS 2004-05 TO 2010-11).

EXHIBIT P7 TRUE COPY OF THE EMERGENCY PETITION DATED 30-12-2014 FILED BEFORE THE CIT(A)-V,KOCHI (A.YS 2004-05 TO 2010-11).

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) Nos.4282 & 4297 of 2015

..

Dated this the 11th day of February, 2015

JUDGMENT

The petitioners in both these writ petitions are assessees under the Income Tax Act, 1961 [for short, 'IT Act']. It is stated that, against the assessment orders for the assessment years 2004 - 2005 to 2010 - 2011, the petitioners have filed appeals before the 3rd respondent appellate authority and the said appeals are pending consideration before the said authority.

2. In the meanwhile, when faced with recovery proceedings, the petitioners approached the 1st respondent through a petition under Section 220(6) of IT Act, and the 1st respondent had granted a conditional stay of recovery of the amounts confirmed against the petitioners by the assessment orders, on condition that the petitioners paid an amount of Rs.3,00,000/-each, per month during the pendency of the appeal before the 3rd respondent appellate authority.

3. It is the case of the petitioners that the 2nd respondent has now sought to modify the earlier arrangement by insisting on a payment of Rs.6,00,000/- each per month by the petitioners, as a condition for continuation of the stay against recovery of the balance amounts confirmed against the petitioners by the assessment orders. It is under these circumstances that the petitioners have approached this Court through the present writ petitions.

4. I have heard Sri. Anil D.Nair, learned counsel for the petitioners and Sri. Jose Joseph, learned Standing Counsel for the Income Tax Department, in both these writ petitions.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, and taking note of the fact that, the appeals preferred by the petitioners against the assessment orders have now been pending consideration before the 3rd respondent for over three years, I direct the 3rd respondent to consider and pass orders in the said appeals within a period of six months from the date of receipt of a copy of this judgment, after hearing the petitioners.

6. It is made clear that, till such time as orders are passed by the 3rd respondent, as directed and communicated to the petitioners, recovery steps for recovery of the balance amounts of tax and interest confirmed against the petitioners by the assessment orders in question, shall be kept in abeyance on condition that the petitioners continue to effect the payment @ Rs.3,00,000/- each per month.

These writ petitions are disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/12/02/