IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 9454 of 2015 (F)

PETITIONER(S):

THE PLANTATION CORPORATION OF KERALA LTD.,
KOTTAYAM -686 004.,
REPRESENTED BY MANAGING DIRECTOR A.UNNIKRISHNAN.

BY ADV. SRI.RAMESH CHERIAN JOHN

RESPONDENT(S):
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1. THE DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE- 1, PUBLIC LIBRARY BUILDINGS,
SASTHRI ROAD, KOTTAYAM -686 001.

2. THE COMMISSIONER OF INCOME TAX,
PUBLIC LIBRARY BUILDINGS, SASTHRI ROAD,
KOTTAYAM -686 001.

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

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vmr

WP(C).No. 9454 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- TRUE COPY OF THE ASSESSMENT ORDER DATED 21/12/2011.

EXHIBIT P2- TRUE COPY OF THE LETTER DATED 10/06/2011 BY THE ASSISTANT COMMISSIONER TO THE PETITIONER.

EXHIBIT P3- TRUE COPY OF THE LETTER DATED 24/06/2011 OF THE PETITIONER TO THE ASSISTANT COMMISSIONER, INCOME TAX.

EXHIBIT P4- TRUE COPY OF TDS CERTIFICATE ISSUED BY CANARA BANK DATED 05/05/2009.

EXHIBIT P5- A TRUE COPY OF THE AUDIT REPORT BY THE CHARTERED ACCOUNTANTS DATED 25/09/2009 IN FORM NO 3 CA AND FORM NO 3CD.

EXHIBIT P6- TRUE COPY OF THE NOTICE ISSUED BY THE ASSISTANT COMMISSIONER, INCOME TAX, UNDER SECTION 148 DATED 17/02/2014.

EXHIBIT P7- TRUE COPY OF THE LETTER DATED 12/06/2014 SENT BY THE PETITIONER TO THE ASSISTANT COMMISSIONER, INCOME TAX.

EXHIBIT P8- TRUE COPY OF THE NOTICE DATED 21/07/2014 ISSUED TO THE PETITIONER.

EXHIBIT P9- TRUE COPY OF THE LETTER DATED 30/07/2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P10- TRUE COPY OF THE LETTER DATED 11/08/2014 OF THE PETITIONER TO THE 1ST RESPONDENT.

EXHIBIT P11- TRUE COPY OF SCHEDULE-G OF BALANCE SHEET.

EXHIBIT P12- TRUE COPY OF THE TRIBUNAL ORDER DATED 09/10/2009.

EXHIBIT P13- TRUE COPY OF THE ORDER DATED 20/10/2014 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P14- TRUE COPY OF THE REVISION PETITION DATED 04/11/2014 FILED BEFORE THE 2ND RESPONDENT.

EXHIBIT P15- TRUE COPY OF THE ORDER DATED 24/02/2015 PASSED BY THE 2ND RESPONDENT.

EXHIBIT P16- TRUE COPY OF THE ASSESSMENT ORDER DATED 26/02/2015 PASSED BY THE 1ST RESPONDENT.

RESPONDENTS EXHIBIT : NIL

/TRUE COPY/

P.A.TO JUDGE

vmr

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 9454 of 2015
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Dated this the 25th day of March, 2015

JUDGMENT

The petitioner, a plantation company fully owned by the Government of Kerala, is aggrieved by Ext.P16 order of assessment, that was passed against it in terms of Section 143(3) read with Section 147 of the Income Tax Act. The case of the petitioner in the writ petition is that, while the assessment in respect of the petitioner company for the year 2009-10 had originally been completed by Ext.P1 assessment order, the respondents had, subsequently, initiated proceedings for reassessment by issuing a notice under Section 148 of the Income Tax Act. The petitioner then approached the respondents seeking the reasons, on the basis of which the assessment was proposed to be reopened, and the respondents furnished the detailed reasons by Ext.P9 communication. While the petitioner preferred his objections to the reasons stated in Ext.P9 communication, the said objections were overruled by the assessing officer by Ext.P13 order. The petitioner then preferred a revision against Ext.P13 order before the revisional authority under Section 264 of the Income Tax Act. The said revision petition came to be dismissed by the revisional authority on the ground that, the revision application was not maintainable inasmuch as Ext.P13 order could not trace its validity to any specific provision of the Income Tax Act. Immediately thereafter, the assessing authority proceeded to pass Ext.P16 reassessment order, which is impugned in the writ petition.

2. I have heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents as well.

3. On a consideration of the facts and circumstances of the case, and the submissions made across the bar, I find that inasmuch as Ext.P16 order, passed under Section 143(3) read with Section 147 of the Income Tax Act, is an appealable one, and there is no jurisdictional error pointed out in respect of the said order, a challenge to Ext.P16 order, in proceedings under Article 226 of the Constitution of India, cannot be maintained. While it is the specific case of the petitioner that the reasons communicated to the petitioner for reopening the assessment, and the reasons that were given in Ext.P13 order, while rejecting the objections filed by the petitioner, are not valid, I am of the view that, at this distance of time, when the 1st respondent has already passed the

assessment order under Section 143(3) read with Section 147 of the Income Tax Act, the said contention may not be of much avail to the petitioner. Thus, relegating the petitioner to the alternate remedy of filing an appeal against Ext.P16 order, before the appellate authority under Income Tax Act, I dismiss the writ petition, in its challenge against Ext.P16 order.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das