

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 32844 of 2015 (F)

PETITIONER :

**M/S. SHALOM WOOD MAGIC,
STADIUM BYEPASS ROAD, PALAKKAD,
REPRESENTED BY JOSEPH.G.P., PARTNER.**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.A.RIYAS (MANJAPPARA)**

RESPONDENT(S):

- 1. THE JOINT COMMISSIONER OF INCOME TAX,
PALAKKAD RANGE, PALAKKAD, PIN-678 001**
- 2. THE COMMISSIONER OF INCOME TAX (APPEALS),
AAYAKAR BHAVAN, THRISSUR-680 001**

**BY SRI.TOJAN J VATHIKULAM,SC
SRI.JOSE JOSEPH, SC, FOR INCOME TAX**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.32844/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER FOR THE YEAR 2012-13 DATED 27/03/2015
- P2 COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 29/04/2015
- P3 COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 29/04/2015
- P4 COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 30/09/2015.

RESPONDENT'S EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 32844 of 2015

Dated this the 29th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 conditional order of stay passed by the 2nd respondent in an appeal preferred by the petitioner against an order of assessment under the Income Tax Act. In Ext.P4 order, the 2nd respondent found that, although the notice regarding the posting of hearing of the stay petition was sent by registered post/acknowledgment due to the address of the petitioner, the said notice was returned by the postal authority with a remark "locked". Under the said circumstances, and seeing that there was no appearance on behalf of the petitioner, the 2nd respondent proceeded to dispose the stay petition, without hearing the petitioner and directed payment of 50% of the demand, subject to payment of the balance 50% in ten equal monthly installments. The grievance of the petitioner in the writ petition is essentially that the 2nd respondent did not take any fresh steps, after the notice intimating the petitioner of the hearing of the stay petition was returned on the first occasion with the endorsement "locked". It is pointed out that, Ext.P4 order was served on the petitioner at the same address and the petitioner received the same.

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

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that Ext.P4 order was passed against the petitioner without hearing him. The 2nd respondent on receiving the posting notice that was sent to the petitioner with an endorsement "locked" from the postal authority, ought to have taken steps to either affix the notice at the premises or resort to some other mode of communication of the notice to the petitioner. It is on account of the inaction of the 2nd respondent, to resort to any alternate procedure for service of notice that the petitioner was not able to appear at the hearing scheduled on 16.09.2015. At any rate, the petitioner has approached this Court with the present writ petition, challenging the said order. On a consideration of the factual circumstances in this case, I feel that the petitioner should be afforded an opportunity of a personal hearing before the 2nd respondent. Accordingly, I quash Ext.P4 order and direct the 2nd respondent to pass fresh orders in the matter, after hearing the

petitioner, within a period of one month from the date of receipt of a copy of this judgment. To enable the 2nd respondent to do so, I direct the petitioner to appear before the office of the 2nd respondent at 11 AM on 16.11.2015.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE