IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2020 / 25TH BHADRA, 1942

WP(C).No.16188 OF 2020(W)

PETITIONER:

SHRI K.C. UNNIKRISHNAN,PAN AAFPU8345M,
KOTTALATHODY HOUSE, ALATHUR,
PALAKKAD-678 722.

BY ADV. SMT.DIVYA RAVINDRAN

RESPONDENTS:

1 **THE INCOME TAX OFFICER,**
WARD-3, PALAKKAD RANGE,
PALAKKAD-678 014.

2 **THE PRINCIPAL COMMISSIONER OF**
INCOME TAX,C.R.BUILDING,
I.S. PRESS ROAD, KOCHI-682 018.

R1-R2 BY ADV. SRI.P.K.RAVINDRANATHA MENON (SR.)
R1-R2 BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16.09.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 16th day of September, 2020

The petitioner seeks to quash Ext.P5 and direct the first respondent to rectify the TDS mismatch after taking into account Ext.P2 Return and Ext.P3 Form 16A TDS Certificate and to issue refund along with interest for the delayed period from the date of deduction of TDS to the date of actual granting of refund in accordance with the claim by the petitioner.

2. The petitioner filed return of income tax for assessment year 2007-08 in Form No.3 on 08.02.2008. As per Ext.P3, an amount of ₹1,15,034/- was deducted by the Life Insurance Corporation of India from the payment made to the petitioner towards TDS, while tax payable by the petitioner for the assessment year 2007-08 was only ₹64,025/-. The petitioner was awaiting refund.

3. However, by Ext.P5, the respondent required the

petitioner to pay ₹99,030/- towards tax and interest dues. The petitioner, filed Ext.P6 application for rectification pointing out that the TDS effected as per Ext.P3 is already with the respondent and therefore Ext.P5 is unsustainable.

4. The learned standing counsel appearing for the respondents filed a statement in the writ petition and opposed the prayers of the petitioner. According to the respondents, the petitioner failed to furnish the original TDS Certificate to the Department. In the absence of original TDS Certificate, the then Assessing Officer has not given credit for the TDS amount of ₹1,15,034/- at the time of processing the Return under Section 143(1). Further on verification, it is found that the said TDS amount is not reflected in the TDS Database of the Department, contended the Standing Counsel.

5. The learned Standing Counsel appearing for the respondents further submitted that in the absence of TDS credit in the TDS Database of the Department and also due

to the non availability of the original TDS Certificate (Form No. 16A), the first respondent will make necessary enquiries from the deductor regarding the genuineness of the TDS credit and as to whether the tax deducted at source has been credited to the Central Government account.

6. Heard.

7. It is seen that TDS has been deducted as per Ext.P3 Certificate issued by the Life Insurance Corporation of India. According to the petitioner, the petitioner produced original of Ext.P3 along with Ext.P1 ITR. The case of the respondents is that this remittance is of the year 2007-08 and its entry is not reflected in Database. When the petitioner asserts that original of Ext.P3 has already been submitted before the Income Tax Authorities, the petitioner cannot be called upon to produce the original again.

8. In the circumstances, the writ petition is disposed of directing the respondents to consider Ext.P6 rectification application with reference to Ext.P3. The first respondent

will be at liberty to get necessary information from the Life Insurance Corporation to decide the issue. While deciding the issue the first respondent shall also consider whether necessary reduction is to be given towards interest dues, to the petitioner.

The writ petition is disposed of as above.

Sd/-
N. NAGARESH
JUDGE

ncd

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**THE TRUE COPY OF INCOME TAX RETURN IN FORM NO.3 DATED 08.02.2008 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR AY 2007-08.**
EXHIBIT P2	**THE TRUE COPY OF INCOME TAX RETURN IN FORM NO.4 DATED 3.11.2008 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR AY 2007-08.**
EXHIBIT P3	**TRUE COPY OF THE FORM 16A TDS CERTIFICATE OBTAINED FROM THE BRANCH MANAGER LIC OF INDIA ALATHUR BRANCH DATED 12.4.2009.**
EXHIBIT P4	**TRUE COPY OF THE LETTER DATED 17.7.2009 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
EXHIBIT P5	**TRUE COPY OF THE INTIMATION DATED 30.3.2010 RECEIVED UNDER SECTION 143(1) OF THE ACT FROM THE 1ST RESPONDENT.**
EXHIBIT P6	**TRUE COPY OF THE RECTIFICATION APPLICATION DATED 23.4.2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
EXHIBIT P7	**TRUE COPY OF THE INTIMATION DATED 4.3.2016 RECEIVED FROM THE 1ST RESPONDENT UNDER SECTION 245 OF THE ACT FOR AY 2015-16.**
EXHIBIT P8	**TRUE COPY OF THE E-FILING RESPONSE DATED 5.5.2016 SENT TO THE 1ST RESPONDENT FOR AY 2015-16.**
EXHIBIT P9	**TRUE COPY OF THE E-FILING REFUND STATUS FOR A7 2015-16 DATED 21.12.2016.**
EXHIBIT P10	**TRUE COPY OF THE LETTER DATED 26.8.2019 SENT BY THE PETITIONER TO THE 1ST RESPONDENT FOR AY 2015-16.**