IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

WP(C) NO. 1840 OF 2024

PETITIONER/S:

AFC KURIES PRIVATE LIMITED
AGED 66 YEARS
X/1942, OPPOSITE BSNL OFFICE, POST OFFICE ROAD, THRISSUR CORPORATION, THRISSUR, REPRESENTED BY ITS MANAGING DIRECTOR, MR.M.K. SREEDHARAN, S/O. KUNJAN KUMARAN, RESIDING AT MARAMKALAYIL HOUSE, APOLLO STREET, CHELAKKOTTUKARA, KURIACHIRA P.O., THRISSUR-680006, PIN - 680001

BY ADVS.
N.MURALEEDHARAN NAIR
ANTONY JONES

RESPONDENT/S:

1 ASSESSMENT UNIT
THE INCOME TAX DEPARTMENT, NATIONAL FACELESS ASSESSMENT CENTRE, NEW DELHI, PIN - 110001

2 THE COMMISSIONER OF INCOME TAX (APPEALS)
NATIONAL FACELESS APPEAL CENTRE, NEW DELHI, PIN - 110001

3 THE INCOME TAX OFFICER, WARD 1(1), THRISSUR
AAYAKAR BHAVAN, INCOME TAX OFFICE, SHAKTHANTHAMPURAN NAGAR, THRISSUR, PIN - 680001

OTHER PRESENT:

AJITH KUMAR-SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 18th day of January, 2024

This writ petition has been filed by the petitioner seeking the following prayers:

> *"I) Issue a writ of mandamus or any other writ, order or direction, directing the 2nd respondent to pass orders on Exts.P4 to P6 appeal and petitions as expeditiously as possible.*
>
> *ii) Issue a writ of mandamus or any other writ, order or direction directing the respondents not to take any steps to realise the amount assessed under Ext.P1 assessment order as rectified by Exts.P2 and P3 demanded notice, pending decision on Ext.P4 appeal.*
>
> *iii) Pass such orders as this Hon'ble Court may deem fit to grant in the circumstances of the case. "*

2. The petitioner did not file the return of its income tax for the assessment year 2017-2018 as per the provision of Section 139 (1) of the Income Tax Act, 1961 (hereinafter referred to as the 'I.T. Act, 1961'). On the basis of the information available with the Office of Jurisdictional Assessing

Officer, it was noticed that the petitioner/assessee had deposited Rs.14,84,119/- in cash in his account in the Financial Year 2016-17 relevant to the Assessment Year 2017-18. The petitioner's/assessee's case was reopened under Section 147 of the I.T. Act, 1961 and a notice under Section 148 of the I.T. Act was issued on 27.05.2019, after obtaining the prior approval of the competent authority within the statutory period of limitation prescribed for reopening of the assessment.

3. In response to notice issued under Section 148 of the I.T. Act,1961 the petitioner filed its return of its income on 19.06.2020. Subsequently, a notice under Section 143(2) of the I.T. Act, 1961 was issued on 17.12.2020. The petitioner/assessee filed a response to the said notice. After considering the response to the notice issued to the petitioner, the assessment order under Section 147 r/w Section 144B of the I.T. Act, 1961 was finalized vide Ext.P1 dated 16.12.2021 under Section 147 r/w Section 144B of the I.T. Act, 1961. The total assessed income under Section 143(3) r/w Section 147 and 144B was calculated as Rs.10,05,71,840/-, on which tax and interest has been demanded. The total additions made under Section 69A of the I.T. Act are Rs.9,92,23,870/-.

4. The petitioner has filed statutory appeal against the said assessment order. The appeal has been filed with some delay for which an application for condoning the delay has been filed along with the appeal and stay petition.

5. The petitioner/assesse is facing the recovery action in pursuance to the assessment order passed. The learned counsel for the petitioner submitted that the Appellate Authority, i.e., the respondent No.2 had not decided the application for condoning the delay as well as stay petition and the petitioner is facing recovery action.

6. Therefore, this Court may direct the respondent No.2 to decide the appeal and to decide the application for condoning the delay and stay petition expeditiously and till such a decision is taken, this Court restrain the respondent from recovering the amount from the petitioner. Admittedly, the petitioner has not filed the appeal on time. There is delay in filing the appeal for which he has filed the application for condoning the delay. This Court does not exercise the parallel jurisdiction with the Appellate Authority and therefore, this Court would not like to grant any interim stay as the petitioner himself has not filed appeal on time. However, the respondent

No.2 should proceed with the matter expeditiously, in accordance with the law, and decide the application for condoning the delay and stay petition within a period of two months.

With the aforesaid direction, the present writ petition stands finally disposed of.

Sd/-

DINESH KUMAR SINGH

JUDGE

AP

APPENDIX OF WP(C) 1840/2024

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT UNDER THE INCOME TAX ACT FOR THE YEAR 2017-18 DATED 16.09.2021
Exhibit P2	TRUE COPY OF THE RECTIFIED ORDER ISSUED BY THE 3RD RESPONDENT DATED 29.09.2023
Exhibit P3	TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT DATED 16.09.2021
Exhibit P4	TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 24.12.2021
Exhibit P5	TRUE COPY OF THE DELAY CONDONATION PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 24.12.2021
Exhibit P6	TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 24.12.2021

RESPONDENTS' EXHIBITS; NIL

//TRUE COPY//

PA TO JUDGE