IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WA NO. 654 OF 2025

AGAINST THE JUDGMENT DATED 18.03.2025 IN WP(C) NO.10578 OF 2025 OF HIGH COURT OF KERALA

APPELLANT(S)/WRIT PETITIONER :

1. ABDUL SALAM E K
AGED 62 YEARS
SON OF EBRAHIM S.K. CONSTRUCTIONS KARUKUNNATH HOUSE,
PERINGALA P.O. ERNAKULAM, PIN - 683565

BY ADVS.
DR.PRADEEP K.P.
T.T.BIJU
T.THASMI
M.J.ANOOPA
POOJA V.M.

RESPONDENT(S)/RESPONDENTS :

1 CENTRAL BOARD OF DIRECT TAXES
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
GOVERNMENT OF INDIA, NORTH BLOCK , NEW DELHI
REPRESENTED BY ITS CHAIRMAN, PIN - 110001

2 PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
AAYAKAR BHAVAN OLD RAILWAY STATION ROAD,
KOCHI, PIN - 682018

3 ADDITIONAL DIRECTOR/INCOME TAX OFFICER
ASSESSMENT UNIT, INCOME TAX DEPARTMENT,
NATIONAL FACELESS ASSESSMENT CENTRE,
2ND FLOOR, E-RAMP, JAWAHARLAL NEHRU STADIUM,
NEW DELHI, PIN - 110003

4 THE BRANCH MANAGER
SOUTH INDIAN BANK, KARIMUGAL BRANCH,
KARIMUGAL P.O. ERNAKULAM, PIN - 682303

BY SRI JOSE JOSEPH, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DR. A.K. JAYASANKARAN NAMBIAR &
EASWARAN S., JJ.

W.A. No.654 of 2025

Dated this the 10th day of April, 2025

JUDGMENT

Easwaran S., J.

This intra court appeal arises out of the judgment of the learned Single Bench in W.P.(C) No.10578 of 2025 dated 18.3.2025.

2. The brief facts necessary for the disposal of this writ appeal are as follows:

The appellant/petitioner is an assessee under the Income Tax Act and a contractor with a firm by name M/s S.K. Constructions, who was awarded with a work in connection with RBDCK - Airport Sea Port Road Phase II. The petitioner was served with a notice under Section 142 of the Income Tax Act. In response to the said notice, the petitioner filed a reply before the assessing authority with details. Dissatisfied with the same, the assessing authority issued Ext.P6 show cause notice dated 21.1.2025. Though the petitioner sought for an adjournment, a fresh notice was issued fixing the date of hearing as 28.1.2025. On 28.1.2025 also, the petitioner sought 30 days' time for the production of the documents

in order to explain the case of the petitioner. However, it is alleged that on 17.2.2025, the assessing authority proceeded to assess the petitioner by Ext.P10 order. It is impugning Ext.P10 order that the appellant/petitioner approached this Court in the present writ petition. The learned Single Judge who considered the writ petition was of the view that the appellant/petitioner has an alternate remedy of filing an appeal and accordingly dismissed the writ petition. Aggrieved by the dismissal of the writ petition, the present writ appeal is filed.

3. Heard Dr. Pradeep K.P., the learned counsel appearing for the appellant and Sri. Jose Joseph, the learned Standing Counsel appearing for the Income Tax authorities.

4. On consideration of the rival submissions raised across the Bar, we are of the considered opinion that no case for interference is made out by the appellant. Admittedly, the appellant did not produce any documents before the assessing authority. The case projected by the appellant is that he was not in a position to produce the relevant documents because there was a delay in obtaining the documents from the respective banks. For a specific query raised by us as to whether the appellant received the documents within the time as sought for by him before the

assessing authority, the learned counsel for the appellant pointed out that his client received the documents only after the period of thirty days as sought by him. Be that as it may, we find that the appellant, after requesting for time as per Exts.P7(a) and P7(b), did not enquire with the assessing authority regarding the status of his request for adjournment. It is pertinent to mention that the assessment order was passed on 17.2.2025. Thereafter, even at the time of filing of the writ petition, the appellant could not produce any documents stated to have been obtained by him from the bank authorities. In such circumstances, we are not in a position to consider the genuineness of the case projected by the appellant. Thus, we cannot find fault with the learned Single Judge in having relegated the appellant to avail the alternate remedy of preferring an appeal.

5. Accordingly, we find that there is no merit in the appeal and the same is liable to be dismissed. However, at this point of time, the learned counsel appearing on behalf of the appellant sought indulgence of this Court to extend the period of time for preferring the appeal inasmuch as the petitioner was *bonafide* with prosecuting the matter before this Court from 10.3.2025 till date. We find that the said request is genuine and *bonafide*. Accordingly,

while dismissing the appeal, we make it clear that if the appellant prefers an appeal against Ext.P10 order within a period of one month from the date of receipt of a copy of the judgment, the same shall be construed to have been filed within time and the appellate authority shall proceed to consider the appeal in accordance with law after affording an opportunity of being heard to the appellant.

Writ appeal ordered accordingly.

Sd/-
DR. A.K. JAYASANKARAN NAMBIAR,
JUDGE

Sd/-
EASWARAN S.
JUDGE

NS