



2024:KER:28417

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 11<sup>TH</sup> DAY OF APRIL 2024 / 22ND CHAITHRA, 1946

WP(C) NO. 14409 OF 2024

**PETITIONER:**

LERIC REECHES,  
AGED 51 YEARS, VP-4/442 THUSHARAM,  
VIZHINJAM P. O., TRIVANDRUM,  
KERALA, PIN - 695521.

BY ADVS.

SRI. R. V. EASWAR (SR.)  
SRI. SIDHARTH A. MENON  
SRI. MUHAMMED ALJUQ A.  
SMT. RUBAL BANSAL(D/3897/2010)  
SRI. PRAKHAR PANDEY(D/4368/2019)  
SMT. SANDRA MARIYA(K/1690/2023)

**RESPONDENTS:**

- 1 INCOME TAX OFFICER,  
WARD 2(1), TRIVANDRUM, ROOM NO:A-104, 1ST,  
AAYKAR BHAWAN, IST FLOOR, KAWDIAR P. O.,  
THIRUVANANTHAPURAM, KERALA, PIN - 695003.
- 2 ASSESSMENT UNIT INCOME TAX DEPARTMENT (NFAC,)  
NORTH BLOCK, NEW DELHI,  
REPRESENTED BY CIT (NFAC), PIN - 110001.

BY ADVS.

SRI. CHRISTOPHER ABRAHAM - SC  
SRI. KEERTHIVAS GIRI - SC  
SRI. P. G. JAYASHANKAR - SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
11.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



**DINESH KUMAR SINGH, J.**

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**W.P.(C) No. 14409 of 2024**  
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Dated this the 11<sup>th</sup> day of April, 2024

**JUDGMENT**

1. Heard Mr. R. V. Easwar, learned Senior Counsel for the petitioner assisted by Ms. Rubal Bansal, Prakhar Pandey, Sidharth A. Menon and Mr. Muhammed Aljuq A. and Mr. Christopher Abraham, learned Senior Standing Counsel for the Revenue.
2. The present writ petition has been filed impugning the assessment order dated 13.03.2024 passed under the provisions of Section 147 read with Section 144 and 144B of the Income Tax Act, 1961 for the assessment year 2016-17.
3. The learned Senior Counsel for the petitioner submits that he will confine his arguments only on the point of violation of the principles of natural justice and denial of effective hearing to the petitioner.
4. The petitioner, an assessee under the provisions of the Act, did not file return of his income for the assessment year 2016-17 under Section 139 of the Act.



5. The information available with the Department would suggest that the petitioner has sold an immovable property to M/s. Greenleaf Resorts Private Limited during the financial year 2015-16 relevant to the assessment year 2016-17. The Department was of the view that the capital gains earned by the petitioner in this transaction has escaped assessment for income tax under the provisions of the Act. Therefore, Show Cause Notice was issued to the petitioner and after fixing the hearing on 13.03.2023 and 24.03.2023, the petitioner filed reply to the Show Cause Notice and, thereafter order under Section 148A(d) of the Act was passed on 29.03.2023 for issuing notice under Section 148 of the Act. In response to the said notice, the petitioner filed return of his income for the assessment year in question. In the while, petitioner filed reply to the Show Cause Notice dated 22.12.2023 opted for personal hearing through video conferencing. The petitioner was provided the link, however, the petitioner could not join the link for technical failure on the part of the Department. To that effect, the petitioner had taken the screenshot which has been placed on record as Exhibit P-14 and also addressed e-mail regarding the issue that the petitioner could not log in to address the argument. However, despite this e-mail addressed to the Department, no



further opportunity was given to the petitioner and the impugned order has been passed.

6. It is submitted by the learned Senior Counsel for the petitioner that the opportunity of hearing means 'effective opportunity of hearing' and that the petitioner could not log in to address the argument because of the technical failure in the website itself, there was no hearing at all. It is submitted that since there has been failure of compliance of the statutory provision of hearing as well as principles of natural justice as enshrined under Article 14 of the Constitution of India, the order suffers from inherent illegality and, therefore, it may be set aside.

7. Mr. Christopher Abraham, learned Senior Standing Counsel for the Revenue is not in a position to dispute the screenshot and the e-mail placed on record by the petitioner.

8. Considering the above submissions and taking note of the fact that the petitioner was not given effective hearing and without providing the effective hearing the impugned assessment order has been passed, I am of the considered view that the order suffers from violation of the principles of natural justice and, therefore, the same is set aside. The matter is remitted back to the 2<sup>nd</sup> respondent to provide fresh link to the petitioner intimating the date and time



for hearing and after hearing the petitioner on the date and time fixed, the assessment order should be finalised expeditiously in accordance with the law.

With the aforesaid directions, the present writ petition stands allowed.

**Sd/-**

**DINESH KUMAR SINGH  
JUDGE**

Svn

**APPENDIX OF WP(C) 14409/2024****PETITIONER'S EXHIBITS**

- EXHIBIT P1** FINAL ASSESSMENT ORDER DATED 13.03.2024 ISSUED BY RESPONDENTS
- EXHIBIT P2** NOTICE OF DEMAND DATED 13.03.2024 ISSUED UNDER SECTION 156 OF THE IT ACT
- EXHIBIT P3** NOTICE FOR PENALTY DATED 13.03.2024 ISSUED UNDER SECTION 274 READ WITH SECTION 271(1)(C) OF THE IT ACT
- EXHIBIT P4** NOTICE FOR PENALTY DATED 13.03.2024 ISSUED UNDER SECTION 274 READ WITH SECTION 271F OF THE IT ACT
- EXHIBIT P5** NOTICE DATED 29.03.2023 ISSUED UNDER SECTION 148 OF THE IT ACT
- EXHIBIT P6** ORDER DATED 29.03.2023 ISSUED UNDER CLAUSE (D) OF SECTION 148A OF THE IT ACT
- EXHIBIT P7** NOTICE DATED 06.03.2023 UNDER CLAUSE (B) OF SECTION 148A OF THE IT ACT
- EXHIBIT P8** TRUE COPY OF THE REPLY TO P7 DATED 06.04.2023 FILED BY THE PETITIONER
- EXHIBIT P9** TRUE COPY OF NOTICE DATED 24.08.2023 UNDER SECTION 142(1) OF THE ACT ISSUED BY R2
- EXHIBIT P10** TRUE COPY OF NOTICE DATED 22.09.2023 UNDER SECTION 143(2) OF THE IT ACT ISSUED BY R2
- EXHIBIT P11** TRUE COPY OF SHOW CAUSE NOTICE DATED 22.12.2023 ISSUED BY R2
- EXHIBIT P12** TRUE COPY OF REPLY TO P11 DATED 31.01.2024
- EXHIBIT P13** TRUE COPY OF EMAIL INTIMATING THE APPROVAL TO ATTEND VC HEARING DATED 04.03.2024
- EXHIBIT P14** TRUE COPY OF EMAIL DATED 07.03.2024 WITH ATTACHMENT OF SCREENSHOT EVIDENCING THE ATTENDANCE OF PETITIONER IN SCHEDULED MEETING