



2024/KER/17566

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 4<sup>TH</sup> DAY OF MARCH 2024 / 14TH PHALGUNA, 1945

WA NO. 176 OF 2024

AGAINST THE JUDGMENT DATED 29.11.203 IN WP(C) NO.13727 OF  
2023 OF HIGH COURT OF KERALA

APPELLANT/RESPONDENT:

THE INCOME TAX OFFICER WARD-2,  
OFFICE OF THE THE INCOME TAX OFFICER WARD-2,  
ALUVA -683101, PIN - 683101

BY ADV JOSE JOSEPH

RESPONDENT/PETITIONER:

VAZHAKKULAM BLOCK RURAL CO-OPERATIVE SOCIETY LTD.,  
NO.E-1082  
PONJASSERY P.O., VENGOLA, PERUMBAVOOR, ERNAKULAM -  
683547 REPRESENTED BY ITS SECRETARY  
JYOTHIMOL E.J., PIN - 683547

BY ADV.SRI.PREMJIT NAGENDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
04.03.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



## J U D G M E N T

### **Dr. Kauser Edappagath, J.**

The Revenue is in appeal before us impugning the judgment dated 29.11.2023 of a learned Single Judge in W.P.(C).No.13727 of 2023. Since a detailed narration of the facts of the petitioner's case in the writ petition is given in the impugned judgment, we choose not to reiterate those in this judgment since the appeal of the Revenue lies in a very narrow compass.

2. In the writ petition, the challenge of the writ petitioner was to Ext.P5 order passed by the Income Tax Officer Ward-2, Aluva, in terms of Section 148A(d) of the Income Tax Act [hereinafter referred to as the 'IT Act'] and the consequential notice [Ext.P6] issued to the writ petitioner by the said Officer under Section 148 of the IT Act proposing a re-assessment of the income for the assessment year 2019-20.



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3. The grievance of the writ petitioner was that the appellant herein proceeded to pass Ext.P5 order without affording the petitioner an opportunity of being heard as mandated under Section 148A(b) of the IT Act. It was therefore contended that Ext.P5 order was vitiated on account of the non-compliance with the rules of natural justice, and consequently, Ext.P6 notice too was vitiated in law.

4. The learned Single Judge found that inasmuch as Section 148A of the IT Act contemplated the provision of an opportunity of being heard to the assessee, the non-providing of a personal hearing to the assessee vitiated the impugned orders and consequential notices. The said order and notice were therefore quashed, and the writ petitioner was directed to appear before the appellant herein on 12.12.2023 with all relevant documents in its possession for being heard. It was further made clear that if the petitioner did not appear on 12.12.2023, no further opportunity needed to be granted to it by the Income Tax Officer.

5. We have heard Sri.Jose Joseph, the learned Standing



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Counsel for the appellant and Sri.Premjit Nagendran, the learned counsel for the respondent/writ petitioner.

6. The appellant is aggrieved only to the limited extent wherein the learned Single Judge held that personal hearing is mandatory in an enquiry under Section 148A(b) of the IT Act. The learned standing counsel for the appellant Sri.Jose Joseph submitted that considering the nature of the proceedings, the scheme of the statute and the language of the provisions, the assessee is not required to be given an opportunity of personal hearing before passing an order under Section 148A(d) of the IT Act. The question whether affording a personal hearing to the assessee is mandatory in an enquiry under Section 148A(b) of the IT Act came up for consideration recently before the Division Bench of this Court in *Income Tax Officer v. Asamannoor Service Co-operative Bank Limited* (2024 KHC OnLine 28). It was held that Section 148A of the IT Act contemplates that the assessee should be granted an opportunity of being heard and that opportunity must include the right of personal hearing as well. The dictum



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laid down in the said judgment squarely applies to the facts of this case. Hence, we find no merit in the appeal. We accordingly dismiss the Writ Appeal as devoid of merit.

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

Sd/-  
**DR. KAUSER EDAPPAGATH**  
**JUDGE**

Rp