IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 11TH DAY OF JUNE 2025 / 21ST JYAISHTA, 1947

WP(C) NO.12516 OF 2023

PETITIONER:

*ALAMANA ABDUL SHAJI UMMERKUTTY,
AGED 50 YEARS,
S/O.UMMERKUTTY, PAN - AAGPU0458G, ALAMANA HOUSE,
NEDUMBASSERY, KAPRASSERY ERNAKULAM -683 585.*

BY ADV SMT.DIVYA RAVINDRAN

RESPONDENTS:

1 *THE INCOME TAX OFFICER,
WARD-3, 2ND FLOOR, KAP COMPLEX PERIYAR NAGAR,
ALUVA ERNAKULAM-683 101.*

2 *THE CENTRAL PROCESSING CENTER,
1ST FLOOR. PRESTIGE ALPHA NO. 48/1 48/2, HOSUR
ROAD, BENGALURU - 560100, REPRESENTED BY ITS ASST.
DIRECTOR OF INCOME TAX.*

3 *THE INCOME TAX OFFICER,
WARD INT TAX C R BUILDING I.S PRESS ROAD.
KOCHI - 682 018.*

4 *THE COMMISSIONER OF INCOME TAX,
INCOME TAX OFFICE CR BUILDING, I.S PRESS ROAD,
KOCHI - 682 018.*

5 *THE COMMISSIONER OF INCOME TAX (INTERNATIONAL*

TAXATION),
BMTC BUILDING, 6TH BLOCK, KORAMANGALA,
BENGALURU -560 095.

SHRI.JOSE JOSEPH, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is an NRI and was assessed by the Income Tax Officer, the 1st respondent herein, pertaining to the assessment year 2015-2016. The case of the petitioner is that, initially the petitioner filed returns under Section 139(1) of the Income Tax Act on 31.08.2015 declaring a total income of Rs.10,99,270/- and paid a tax of Rs.1,17,448/-. Ext.P1 is the said return. The said return was processed by the assessing officer and an intimation order was issued by the 2nd respondent under Section 143(1) demanding an amount of Rs.1,33,400/- as the tax payable by the petitioner. On receipt of such intimation order the petitioner noticed certain mistakes in Ext.P1 return originally filed and in order to cure the mistakes, a revised return was filed under Section 139(5) on 31.03.2017, which was within the permissible period. Ext.P2 was the said return, as per which he claimed refund of Rs.1,17,448/-. However, while submitting the revised return, by mistake, instead of showing the same as revised return, it was shown as the original return. On that reason, the same was not processed.

2. It is also the case of the petitioner that, unfortunately, intimation order under Section 143(1) was not available in the portal for downloading the same. Later, the petitioner came to know about the non-processing of the Ext.P2 revised return, only when the adjustments were made in the subsequent years against the refund eligible to the petitioner. To be precise, the petitioner came to know about such adjustments on 04.12.2021, which is evidenced from Ext.P3 Form 26AS. Even though the petitioner approached the assessing officer and other authorities concerned, for uploading the intimation order under Section 143(1), pertaining to Ext.P1 return, the same was not made available in the portal. Ultimately, after a series of communications, the same was made available to the petitioner by the respondents through an E-mail on 20.01.2023.

3. In the mean time, the petitioner submitted Ext.P4 revision petition before the 5th respondent on 29.03.2022, which ultimately resulted in Ext.P11 order by which it was dismissed. The reasons for dismissing the application mentioned in Ext.P11 were two fold. First one is that, as the relief sought in Ext.P4 was

to direct the assessing officer to pass orders based on revised return and refund of Rs.1,89,888/-, the same cannot be entertained in a revision petition. According to the 5th respondent, as per Section 264 of the Income Tax Act, 1961, the powers vested upon the revisional authority is to examine the validity of an order passed and it does not extend to issue directions to the assessing authority as sought in the revision petition. The second reason was that, the revisional authority found that the application for revision was submitted after five years from the date of submission of return. Therefore, it is time barred. It was in these circumstances, this writ petition is submitted by the petitioner, challenging Ext.P11 order and seeking a direction to the 5th respondent to reconsider Ext.P4 order application filed by the petitioner.

4. Heard Smt.Divya Ravindran, the learned counsel for the petitioner and Sri.Jose Joseph, learned standing counsel for the Income Tax Department.

5. The question that arises for consideration is with regard to the legal sustainability of Ext.P11 order. It is

discernible from Ext.P11 order itself that, the decision was taken by the 5th respondent after calling for a report from the Assessing Officer and the Range Head. It is also evident from the reports of the said authorities, which are extracted in the order itself, that, the intimation order under Section 143(1) was not available in the website, for downloading. The facts that the petitioner had submitted revised return on 31.03.2017 and it was within the stipulated time, are admitted. The fact that, the return was submitted as an original one, instead of uploading it as a revised return, is also remains undisputed. It is also evident from the said reports that, since Ext.P2 return submitted by the petitioner was mentioned as an original return, the same was not processed and Ext.P1 return alone was processed. Thus, to that extent the case advanced by the petitioner appears to be true, as there is no dispute.

6. When coming to the sustainability of the order passed by the 5th respondent by way of Ext.P11, the contentions raised by the learned standing counsel is that, going through the nature of powers vested upon the revisional authority as contemplated

under Section 264, the relief as claimed in Ext.P4 could not have been entertained. On going through the statutory stipulations contained in Section 264 of the Act, I find that such contention has to be accepted. As rightly pointed out by the learned standing counsel for the respondent, powers conferred upon the revisional authority are confined to examine the sustainability of an order passed under the provisions of the Act and it does not extend to issuing orders to the assessing authority without reference to any order so passed. Therefore, to that extent, that contention has to be accepted.

7. Even while arriving at that conclusion, one crucial aspect cannot be ignored. It is a fact which is discernible from the reports of the Assessing Officer and the Range Head that, the petitioner was prevented from invoking the remedy of revision till the intimation order as contemplated under Section 143(1) was made available to him on 20.01.2023. It was pointed out by the learned standing counsel for the petitioner that, even according to the petitioner, intimation under Section 143 (1) was originally served upon the petitioner and only thereupon, the

revised return was submitted. However, it is an admitted fact that, that such intimation was not available for downloading in the portal and the same was made available only later , to the petitioner by way of Email. Therefore, the proper remedy of the petitioner is to submit a fresh revision petition based on Ext.P12, which is the intimation order, under Section 143 (1) of the Act served upon him by Email. Therefore, the period of limitation in filing the revision as contemplated under Section 264 has to be considered, from date of receipt of Ext.P12 intimation which was 20.01.2023 or any other date which shall be established by the petitioner, as date of receipt of the order by way of Email, before the assessing officer by producing the documents.

In such circumstances, this writ petition is disposed of directing the petitioner to file a fresh revision petition against Ext.P12, within a period of one month from the date of receipt of a copy of this judgment. In case the same is filed within the said period and the petitioner is able to substantiate the date of receipt of Ext P12, by Email, the same shall be entertained by the 5th respondent. While considering the revision petition, the fact that Ext.P2 return was submitted by the petitioner shall also be taken into account and the contents of the same shall also be considered. Appropriate orders shall be passed within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

ZIYAD RAHMAN A.A.

JUDGE

DG/12.6.25

APPENDIX OF WP(C) 12516/2023

PETITIONER EXHIBITS

Exhibit P1	*TRUE COPY OF THE RETURN FILED BY THE PETITIONER FOR AY 2015-16 ALONG WITH COMPUTATION DATED 31.08.2015*
Exhibit P2	*THE COPY OF THE REVISED RETURN FILED UNDER SECTION 139(5) OF THE ACT DATED 31.3.2017 FOR AY 2015-16 ALONG WITH COMPUTATION*
Exhibit P3	*TRUE COPY OF THE 26AS STATEMENT OF THE PETITIONER FOR AY 2015- 16*
Exhibit P4	*TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER UNDER SECTION 264 OF THE ACT BEFORE THE 4TH RESPONDENT FOR AY 2015-16*
Exhibit P5	*TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE 3RD RESPONDENT FOR AY 2015-16 DATED 14.11.2022*
Exhibit P6	*TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 19.11.2022*
Exhibit P7	*TRUE COPY OF THE REPLY RECEIVED FROM THE 2ND RESPONDENT DATED 19.12.2022*
Exhibit P8	*TRUE COPY OF THE MALL DATED 19.12.2022 SENT TO THE LET RESPONDENT*
Exhibit P9	*TRUE COPY OF THE HEARING NOTICE DATED 12.12.2022 SENT BY THE 5TH RESPONDENT FOR AY 2015-16*
Exhibit P10	*TRUE COPY OF THE REPLY FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT DATED 21.12.2022*
Exhibit P11	*THE TRUE COPY OF THE ORDER UNDER SECTION 264 OF THE ACT DATED 4.1.2023 PASSED BY THE 5TH RESPONDENT*
Exhibit P12	*THE TRUE COPY OF THE INTIMATION ORDER ISSUED UNDER SECTION 143(1) OF THE ACT BY THE 2ND RESPONDENT DATED 02.06.2016*