



2025:KER:26913

**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 27<sup>TH</sup> DAY OF MARCH 2025 / 6TH CHAITHRA, 1947**

**WA NO. 2156 OF 2024**

**AGAINST THE JUDGMENT DATED 12.01.2024 IN WP(C)  
NO.6742 OF 2023 OF HIGH COURT OF KERALA**

**APPELLANT/RESPONDENT IN WPC:**

**JOINT COMMISSIONER OF INCOME TAX  
ASSESSING UNIT, NATIONAL FACELESS ASSESSMENT  
CENTRE, DELHI, PIN - 110001.**

**BY ADVS.  
P.G.JAYASHANKAR  
KEERTHIVAS GIRI**

**RESPONDENT/APPELLANT IN WPC:**

**SUJATHA REVIKUMAR  
AGED 61 YEARS  
PROPREITRIX, M/S GAYATHRI BANKERS, KALANJOOR,  
PATHANAMTHITTA, PIN - 689694**

**BY ADVS.  
ASWIN GOPAKUMAR  
AVINASH KURUNGOT**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
27.03.2025, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**



## **JUDGMENT**

### **Dr.A.K.Jayasankaran Nambiar, J.**

This writ appeal preferred by the Revenue assails the judgment dated 12.01.2024 of a learned Single Judge in W.P(C)No.6742 of 2023.

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

The respondent - writ petitioner is stated to be engaged in the business of money lending. During the assessment year 2021-2022, the petitioner had written off a sum of Rs.7,68,97,170/- on account of an alleged fraud committed by some staff, who had apparently made false entries regarding gold loans. The said aspect came to be noticed by the Income Tax Department and the case of the petitioner was selected for the purpose of a faceless assessment as evident from Ext.P1 notice. The proceedings thereafter culminated in the passing of Ext.P14 order, by which the loss that was determined by the petitioner for the said year was reduced for the purpose of income tax. Penalty proceedings were also separately initiated under Section 270A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act')



for short) for the alleged under-reporting of income.

3. In the writ petition preferred by the respondent impugning Ext.P5 order of assessment, the respondent writ petitioner premised its challenge primarily on the contention that in terms of Section 144B(1)(xvi) of the Act, the assessee was required to be served with a copy of the draft assessment order on the basis of which the show cause notice contemplated under the said provision was issued to him. It was the case of the respondent - assessee that in as much as the draft assessment order had not been served on him along with the show cause notice, the entire proceedings for assessment initiated through Ext.P1 notice, and which culminated in Ext.P14 order, had to be seen as vitiated on account of a violation of the principles of natural justice.

4. The contention of the respondent - assessee found favour with the learned Single Judge, who placed reliance on the judgments in ***National Faceless Assessment Centre and Others v. Automotive Manufacturers (P) Ltd.*** [2023 SCC Online SC 631] and ***Ellathkandi Khaleel Ahammed v. Union of India and Others*** [2022 SCC Online KER 8978], to find that the non-furnishing of the draft assessment order to the respondent - assessee was a fatal mistake that went on to vitiate the assessment order ultimately



passed against the assessee. The learned Single Judge therefore set aside Ext.P14 after reserving liberty to the appellant herein to issue fresh assessment orders after complying with the procedures prescribed under Section 144B of the Act, as understood in the impugned judgment.

5. In the appeal before us, it is the submission of Sri.P.G.Jayashankar - learned Standing Counsel for the Income Tax Department, that the express provisions of Section 144B(1)(xvi) do not contemplate the service of a draft assessment order on an assessee against whom proceedings for assessment have been initiated in terms of Section 144B. He refers to Clause xxiii of Section 144B(1) as it then stood, to point out that the requirement of serving a draft assessment order or the final draft assessment order along with the show cause notice is prescribed only in relation to 'eligible assessee' as defined under the Act and since, in the instant case, the respondent - assessee was admittedly not an eligible assessee, a procedure of furnishing him with the draft assessment order was not required to be complied with.

6. We have considered the rival submissions and we find ourselves in agreement with the learned counsel for the appellant, especially when we read the statutory provisions. No doubt, there is



a different procedure prescribed under the statute for proceeding against an ordinary assessee and an eligible assessee as understood under the statute. While there is a requirement under Section 144B to issue a copy of the draft assessment order or the finalized draft assessment order along with the show cause notice proposing a variation, to an 'eligible assessee', the procedure prescribed in relation to an ordinary assessee as contemplated in Clause xvi of Section 144B(1) does not require the furnishing of a draft assessment order along with the show cause notice that is issued to such assessee. In the case of an ordinary assessee, the draft assessment order has to be seen as merely an internal document that is sent from the assessment unit which has been assigned with the task of assessment and the National Faceless Assessment Centre concerned. Thus, we cannot sustain the impugned judgment of the learned Single Judge which takes a view contrary to the express provisions of the statute while finding that there was a violation of the principles of natural justice that vitiated the assessment completed against the respondent – assessee.

7. We might point out at this juncture that the decisions relied upon in the impugned judgment also do not provide any clarity as regards whether or not the assessee in those cases was an 'eligible



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assessee' or otherwise. We are inclined to presume that the assesseees in those cases were eligible assesseees, since the statutory provisions clearly bring out a distinction between the two. Thus, for the reasons stated above, we allow this writ appeal by setting aside the impugned judgment of the learned Single Judge and dismissing the writ petition.

Sd/-

**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Sd/-

**EASWARAN S.**  
**JUDGE**

ACR