CNR : KLHC010585572026

2026:KER:63475

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 17TH DAY OF AUGUST 2026 / 26TH SRAVANA, 1948

WA NO. 1543 OF 2026

AGAINST THE JUDGMENT DATED 07.07.2026 IN WP(C) NO.15438 OF 2026 OF HIGH COURT OF KERALA

APPELLANT/S:

NAHAS KAKKATTUMMAL
AGED 32 YEARS
SHAMNA MANZIL HOUSE, UNNIKULAM P.O., UNNIKULAM KOZHIKODE, PIN - 673574

BY ADVS.
SMT.K.KRISHNA
SHRI.ACHYUTH MENON
SMT.PARVATHY MENON
SHRI. V. HARISANKAR
SMT.ANNA ANTO

RESPONDENT/S:

1 INCOME TAX OFFICER
INCOME TAX DEPARTMENT, WARD 1(1), RANGE 31 AAAYAKAR BHAVAN, MANANCHIRA KOZHIKODE, PIN - 673574

2 THE ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF INCOME TAX/INCOME TAX OFFICER
INCOME TAX DEPARTMENT, ASSESSMENT UNIT, NATIONAL FACELESS ASSESSMENT

CNR : KLHC010585572026

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CENTRE (NFAC), INCOME TAX DEPARTMENT NEW DELHI, PIN - 110001

3 THE REGISTRAR
KING GEORGE'S MEDICAL UNIVERSITY, SHAH MINA ROAD, CHOWK, LUCKNOW, UTTAR PRADESH, PIN - 226003

BY ADVS.
SHRI.G.KEERTHIVAS, ADDITIONAL STANDING COUNSEL, INCOME TAX DEPARTMENT
SHRI.HARIKUMAR G. (GOPINATHAN NAIR), ADDITIONAL STANDING COUNSEL, INCOME TAX DEPARTMENT

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17.08.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Devan Ramachandran, J.

The appellant is before us because the learned Single Judge has refused to exercise jurisdiction in the writ petition, and has relegated them to their alternative statutory remedy under the Income Tax Act, 1961 ('Act' for short).

2. Smt.Parvathy Menon – learned counsel for the appellant, argued that the impugned assessment order has been settled and issued by the Assessment Authority, "blindly" relying upon certain documents that were given to him by the University where her client is studying and drawing stipend, in which, such sums are erroneously shown to be salary. She insisted that, when her client is admittedly a student of post graduate studies, the amount received by him is only stipend, statutorily so paid to him under law and as per the mandatory guidelines of the National Medical Commission; and hence that the Assessment Authority could not have assessed it in any other manner.

3. Smt. Parvathy Menon then made an alternative submission that, in case this Court is not inclined to accept the afore, then her client may be offered the liberty of producing additional documents before the Assessing Authority in substantiation of his plea; and rued that this has also been denied to him by the learned Single Judge. She explained that, she is making this submission because, even going by the letter which the Assessment Authority has relied upon, the University, where her client is studying, have categorically certified that he has been admitted to MD/MS post graduate course as Junior Resident; and that such are covered by the regulations of the 'NMC', which prohibit payment of salary, but mandate stipend. She concluded, asserting that, in fact, the letters relied upon by the Assessment Authority go wholly contrary to Ext.P5 certificate, which her client has received, which certifies that he is a *bona fide* PG student of the University.

4. Sri. Harikumar Nair – learned Senior Standing Counsel for the Income Tax Department, countered the afore submissions, saying that,

when his client sought information from the University where the appellant is stated to be studying, they received intimation to the effect that the latter have been paid salary “in lieu of the work tendered” (sic). He showed that the letter from the University has been extracted in the Assessment Order, which makes it luculent that the payments are being honoured to him as “salary”; and that TDS on it has also been deducted and remitted. He asserted that, therefore, since there are disputations of facts, the learned Single Judge was without error having relegated the appellant to his statutory remedy.

5. We have no ground for cavil with Sri. Harikumar Nair, to the extent that, when there is an alternative efficacious remedy, a writ petition under Article 226 constitution becomes normally untenable. However, there are well established exceptions to this, particularly when the order impugned is one which has been issued without adverting to relevant facts and law; and which, consequently, stands vitiated and inept.

6. In the case at hand, as mentioned above, the Assessing Officer has gone solely by the letters which he says he received from the University; but without adverting to the other documents that the appellant relies on, including Ext.P5, as also a Government Order under which he was admitted to the course in question.

7. This is not to say that we find blame on the Assessing Officer because, it was also upon the assessee to have placed relevant materials before him. Of course, the answer of Smt.Parvathy Menon to this, is that her client was not given such an opportunity.

8. Be that as it may, we cannot find favour with the impugned judgment, when it is admitted that the “stipend” paid to a student stands fully exempted from the ambit of the “Act”. The Assessment order does not answer this at all, but proceeds to hold that the sums in question are “salary”, relying solely on certain documents stated to have been obtained from the University. This certainly, is a vital question of fact which, the assessee requires to be given an opportunity of establishing

cogently, before a conclusive view can be held against him.

9. In such circumstances, and for reasons afore, we allow this appeal and set aside the impugned judgment, as also Ext.P12 order; however, leaving full liberty to the Assessing Officer to reconsider the matter, after affording necessary opportunity to the appellant – both to produce necessary documents and other germane inputs; thus culminating in an appropriate fresh Assessment Order, as expeditiously as is possible.

10. We clarify that we have not entered into the merits of any of the rival contentions; and that our observations herein are only to guide us to the decision we have taken, and nothing more.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

BASANT BALAJI

JUDGE

jjj