

GAHC010174062023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4537/2023

ASSAM BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE
BOARD
REP BY THE DEPUTY LABOUR COMMISSIONER ASSAM AND DEPUTY CEO
MS ISHANU SHAH HAVING ITS OFFICE AT GOPINATH NAGAR GUWAHATI
781016

VERSUS

UNION OF INDIA AND 10 ORS.
THROUGH SECRETARY TO GOVT. OF INDIA MINISTRY OF FINANCE
DEPTT. OF REVENUE NORTH BLOCK NEW DELHI 110001

2:CENTRAL BOARD OF DIRECT TAXES
THROUGH ITS CHAIRMAN DEPTT. OF REVENUE MINISTRY OF FINANCE
GOVT. OF INDIA NORTH BLOCK NEW DELHI 11001

3:PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX (NER)
INCOME TAX DEPTT. MINISTRY OF FINANCE GOVT. OF INDIA 1ST FLOOR
AAYAKR BHAWAN CHRISTIAN BASTI G.S. ROAD GUWAHATI 781005

4:PRINCIPAL COMMISSIONER OF INCOME TAX GUWAHATI I
INCOME TAX DEPTT. MINISTRY OF FINANCE GOVT. OF INDIA 1ST FLOOR
AAYAKR BHAWAN CHRISTIAN BASTI G.S. ROAD GUWAHATI 781005

5:COMMISSIONER OF INCOME TAX
TDS
INCOME TAX DEPTT. MINISTRY OF FINANCE GOVT. OF INDIA 1ST FLOOR
AAYAKR BHAWAN CHRISTIAN BASTI G.S. ROAD GUWAHATI 781005

6:THE INCOME TAX OFFICER ITO W 3 (1) GUWAHATI
O/O THE INCOME TAX DEPTT. MINISTRY OF FINANCE GOVT. OF INDIA
1ST FLOOR AAYAKR BHAWAN CHRISTIAN BASTI G.S. ROAD GUWAHATI

781005

7:THE INCOME TAX OFFICER ITO (1) 5 GUWAHATI
INCOME TAX DEPTT. MINISTRY OF FINANCE GOVT. OF INDIA 1ST FLOOR
AAYAKR BHAWAN CHRISTIAN BASTI G.S. ROAD GUWAHATI 781005

8:THE INCOME TAX OFFICER WARD 1 (2) GUWAHATI
AAYAKR BHAWAN G.S. ROAD CHRISTIAN BASTI GUWAHATI 781005

9:THE ADDITIONAL/ JOINT /DEPUTY /ASSISTANT COMMISSIONER OF
INCOME TAX/INCOME TEX OFFICER
NATIONAL FACELESS ASSESSMENT CENTRE (FORMERLY NATIONAL E
ASSESSMENT CENTRE) INCOME TEX DEPTT. MINISTRY OF FINANCE
GOVT. OF INDIA NEW DELHI

10:THE DEPUTY COMMISSIONER OF INCOME TAX (EXEMPTION) CIRCLE 2
KOLKATA
10B MIDDLETON ROW 6TH FLOOR KOLKATA 700071

11:THE OFFICER OF THE ASSISTANT COMMISSIONER OF INCOME TAX
INCOME TAX DEPTT. CIRCLE 2 EXEMPT KOLKATA 70007

Advocate for the Petitioner : MS M HAZARIKA

Advocate for the Respondent : SC, INCOME TAX

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 09-08-2023

Heard Ms. M. Hazarika, learned Sr. counsel assisted by Ms. K. Loya, learned counsel appearing for the writ petitioner. Also heard Mr. S.C. Keyal, learned standing counsel, IT Department appearing on behalf of all the respondents.

The writ petitioner is a Board constituted by the Govt. of Assam for carrying out specific activities which includes welfare of construction workers etc. As per the petitioner,

the Board is entitled to exemption from payment of Income Tax on the receivable amount, under Section 10(46) of the IT Act, 1961. Accordingly, vide notification dated 10-11-2021, exemption was also granted to the petitioner Board for the financial years 2021-22; 2022-23; 2023-24; 2024-25 and 2025-26. However, notwithstanding the entitlement of the petitioner Board for IT exemption, no such prayer for exemption has been granted for the previous financial years. Hence, this writ petition.

Ms. Hazarika submits that demand for payment of exorbitant amount of Rs. 108,55,80,663/- has been raised by the IT authorities with retrospective effect, thus causing serious prejudice to the interest of the petitioner Board.

Ms. Hazarika has also pointed that the application dated 26-09-2022 submitted by the petitioner before the Central Board of Direct Taxes (CBDT) seeking exemption from payment of Income Tax for the preceding financial years, has not yet been disposed of by the learned CBDT. It is in that context, Ms. Hazarika submits that if the impugned demand notice is not stayed till disposal of the application pending before the CBDT, the same would result into serious injury to the interest of the writ petitioner.

Mr. Keyal, learned standing counsel, IT department submits that the petitioner Board has been granted exemption for the periods during which statutory provisions did not permit so. The learned departmental counsel has, however, submitted in his usual fairness that until the application submitted by the petitioner before the CBDT is disposed of with a reasoned order, there will be no clarity on the issue raised by the petitioner.

Taking note of the submission made at the bar and as agreed to by both the sides,

this writ petition is, therefore, disposed of by providing that the application dated 26-09-2022 pending before the CBDT be considered on merit and disposed of by a reasoned order, after giving a opportunity of hearing to the petitioner.

Until such time, a reasoned order is passed in the said application, the impugned demand for payment of Income Tax shall remain stayed.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant