

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: WP(C) No.1554/2023

Lt Sh. Sneh Gupta through Legal Heir
Mr. Sahil Mahajan, Age 45 years
S/o Lt. Sh. Sneh Gupta
62 A/D Gandhi Nagar, Jammu-180004.

..... Petitioner(s)

Through :- None.

Vs

1. Union of India through Finance
Secretary, Ministry of Finance, North
Block, New Delhi-110001.
2. Central Board of Direct Taxes
Secretariat building, Department of
Revenue, North Block, New Delhi-
110001.
3. The Deputy Commissioner of
Income Tax DCIT/ACIT Circle 1,
Ayakar Bhawan Railhead Complex
Panama Chowk Jammu-180012.
4. Assessment Unit/Verification
Unit/Technical Unit/Review Unit
National Faceless Assessment Centre
North Block New Delhi-110001.
5. Additional/Joint/Deputy/Assistant
Commissioner of Income
Tax/Income-Tax Officer National
Faceless Assessment Centre North
Block New Delhi-110001.

.....Respondent(s)

Through :- Mr. Suraj Singh Wazir, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER
23.12.2024

01. Vide order dated 18.12.2024, Mr. Sachin Sharma, learned counsel appearing for the petitioner was asked to obtain instructions from his client as to whether prior to 29.05.2023, any notice under Section 142(1) of the Income Tax Act, 1961 was issued and served upon legal heirs of the Assessee-Late Sneh Gupta. He was also called upon to apprise this Court as to the persons who had received notices issued by the Assessing Authority dated 17.01.2023 and 28.02.2023 under Section 142(1) of the Income Tax Act, 1961.

02. Mr. Sachin Sharma, Advocate has not come present. However, Mr. Suraj Singh Wazir, Advocate appearing for the respondents submits that the Assessee-Late Sneh Gupta had died in the year 2015 and, therefore, all notices including those reference to which is made by this Court in order dated 18.12.2024, as per records, have been issued to the legal heir of Lt. Sneh Gupta namely, Sahil Mahajan.

03. In view of the aforesaid position emerging from the official records, it cannot be said by the petitioner Sh. Sahil Mahajan that the order impugned in the writ petition is passed by the Assessing Authority in violation of the principles of natural justice. That being the position, the order of assessment, impugned in this petition, dated 31st May, 2023 for the assessment year 2014-2015, is appealable before the Commissioner of Income Tax (Appeals) under Section 246-A of the Income Tax Act, 1961. The Act provides hierarchy of different adjudicating authorities for redressal of disputes arising out of and

under the provisions of the Income Tax Act. Even, further appeal before the Income Tax Appellate Tribunal is also provided.

04. The petitioner, without exhausting the statutory remedies provided under the Income Tax Act, has approached this Court directly invoking extraordinary writ jurisdiction vested in this under Article 226 of the Constitution of India. We are aware that availability of alternative remedy is not a complete bar to entertain a petition under Article 226 of the Constitution of India and this Court may, in its discretion, entertain a petition directly against an order of the assessment, provided it is demonstrated that the impugned order of Assessment is passed by an incompetent authority or that the same suffers from violation of the principles of natural justice. The writ petition can also be entertained, in case the vires of any statutory provision is subject matter of challenge in the petition.

05. In the instant case, it is the case of the petitioner that the impugned order of Assessment is in violation of the principles of natural justice. We have enquired into this aspect of the matter and as noted above, the notices had been duly served upon Sh. Sahil Mahajan, the legal heir of Late Sneh Gupta, who was well represented before the Assessing Authority.

06. Having considered the matter and perused the material on record, we are of the considered opinion that the instant case does not fall under any of the exceptions enumerated hereinabove. The order impugned is passed by the Assessing Authority having jurisdiction in the matter and that there is no apparent violation of the principles of natural justice. Needless to say that no provision of Income Tax Act is under challenge in this petition.

07.

For all these reasons, we are not inclined to entertain this petition and instead relegate the petitioner to the remedy of appeal before the Appellate Authority, in case, he wishes to challenge the impugned order of assessment.
08.

The petition is, therefore, dismissed with liberty to the petitioner to avail the remedy of appeal provided under the Income Tax Act. We, however, provide that in case the petitioner chooses to file statutory appeal before the appellate Authority under the Income Tax Act, the period spent by him in this Court shall not be reckoned while computing the period of limitation.

JAMMU
23.12.2024
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