IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17261 of 2016

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Rajeev Kumar, son of late Ashok Kumar, resident of Navrashtra Lane, Rajendra Path, P.S.-Kotwali, District- Patna.

.... Petitioner/s

Versus

Union of India, through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar, In person

For the Respondent/s : Mr. Archana Sinha @ Archana Shahi, Sr. Standing Counsel I. T. Department
Mr. Alok Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
&
HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-10-2016

This writ application, made under Article 226 of the Constitution of India, in the form of public interest litigation, seeks following reliefs:

(i) To issue an appropriate writ, order or directions, *inter alia* striking down Section 245-O (3) of the Income Tax, 1961, to the extent that it mandates only Judges of the Supreme Court to be appointed as the Chairman of the Advance Rulings Authority under the Income Tax Act, 1961.

(ii) To issue an appropriate writ, order or directions, *inter alia* striking down Rule 27 of the Advance Rulings (Procedure) Rules, 1996, notified vide GSR 426 (E) dated 17.09.1996, to the extent that it makes the functioning of the Advance Rulings Authority impossible in the absence of the Chairman.

(iii) To issue an appropriate writ, order or directions quashing and setting aside of the advertisement dated 11.04.2016, issued by the Respondent, in so far as it restricts the eligibility for the post of Chairman of the Authority only to such persons who have been Judges of the Hon'ble Supreme Court.

(iv) To issue an appropriate writ, order or directions to ensure that pending the consideration of the present writ petition and/or the appointment of the Chairman of the Advance Rulings Authority, suitable interim arrangement be made to make the Principal Bench of the Authority functional in public interest and in the interest of justice.

2. As is apparent from the prayers made in the writ petition, if the issue, raised by this public interest litigation, is not addressed immediately, it would result in injury to the public interest and cause serious miscarriage in the administration of justice.

3. As can be noted, the petitioner has put to challenge the *vires* of Section 245-O (2) as well as Rule 27 of the Advance Rulings (Procedure) Rules, 1996.

4. Section 245-O of the Income Tax Act, 1961, which provides for constitution of the Advance Rulings Authority (hereinafter to be referred as 'Authority'), being relevant in the present case, is reproduced below:

> "**Authority for advance Rulings**
> **245-O.** (1)……
> (2) The Authority shall consist of a Chairman and such number of Vice-Chairman, revenue Members and law Members as the Central government may, by notification, appoint.
> (3)………….."

5. In Rule 27, which has been impugned in this writ petition, there are, admittedly, four members constituting the Authority, namely, (i) Chairman, (ii) Vice Chairman, (iii) Member (Revenue) and (iv) Member (Judicial). Rule 27 permits a decision to be taken only by Chairman or by only two Members, if one of them is a Chairman.

6. The grievance of the petitioner is that since the post of Chairman and Vice Chairman are vacant, the Authority has become non-functional and, as a result thereof, Rule 27 would be rendered unconstitutional unless it is read down by applying the *"doctrine of necessity"* by the respondent, Union of India, in the manner as the petitioner contends.

7. It is, thus, clear that the relevant provisions of the Income Tax Act, 1961, and the Rules framed thereunder need to be examined by the respondent. The Authority, which forms an integral part of the administration of justice, cannot be allowed to remain effectively non-existent for a long time.

8. In our considered view, therefore, Union of India needs to consider the grievance expressed, in this public interest litigation, and decide if the constitution of the Authority and/or the qualifications prescribed for Chairman need any change. This would necessarily involve consultation with the learned Attorney General so as to take appropriate measure, preferably, within a period of eight weeks from today.

9. We may refer to the case of ***Columbia Sportswear Co. vs. DIT reported in (2012) 11 SCC 224***, wherein the Supreme Court has observed that the Authority is a body exercising judicial power conferred on it and is a tribunal.

10. We, therefore, direct, as an interim measure, that until a decision is taken on the issues raised by the writ petitioner, in this public interest litigation, by the Union of India, and till a new Chairman is appointed, all the pending cases before the Authority shall be dealt with by the Member (Judicial), at the Principal Bench, who shall carry out the functions of the Authority as its in-charge Chairman, so that the functioning of the Authority does not remain completely stopped.

11. This writ application stands disposed off with the above observations and directions.

(I. A. Ansari, CJ)

(Dr. Ravi Ranjan, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
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