NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT 296 of 2017.

Shri Mahesh Shrivastava S/o Late Umashankar Lal Shrivastava, aged about 56 years, R/o Main Road New Cloth Market Pandri, Raipur Chhattisgarh.

---- Petitioner

Versus

1. Principal Commissioner of Income Tax – 1, Raipur Central Revenue Building, Civil Lines, Raipur, Chhattisgarh
2. Income Tax Officer- 3 (3), Raipur Central Revenue Building, Civil Lines, Raipur, Chhattisgarh
3. Union of India, through its Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi 110001

–--Respondents

For Petitioner	:	Shri Siddharth Dubey, Advocate
For Respondent	:	Ms.Naushina Afrin Ali, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/09/2017

1. The present Writ Petition has been filed seeking for limited prayer for staying of the effect and operation of Annexure-P1-the order of re-assessment dated 29/03/2016 or in the alternative directs the respondents not to take any co-ercive action till the appeal which has been made to the Principle Commissioner of Income Tax i.e. respondent No.1 is pending consideration.

2. The counsel for the petitioner submits that, the issues raised in the present Writ Petition is squarely covered by the decision recently passed by this court in the case of Sanjay Kumar Kochhar Vs. Assistant Commissioner of Income Tax in WPT No.66/2017 decided on 13/07/2017.

3. According to the petitioner, against the order of the re-assessment dated 29/03/2016, the petitioner had preferred an appeal before the Jurisdictional Commissioner Income Tax Appeal (In short CIT Appeal) on 27/04/2016. Along with the said appeal an application for stay was also filed under Section 220(6) of the Income Tax Act. But the same was rejected on 04/08/2016. Against the said rejection of the application under Section 220(6), the petitioner had preferred the

petition before the Principle Commissioner of Income Tax as per instructions number 1914 of the CBDT dated 02/02/1993. The said application was filed on 06/09/2016 and in spite of repeated reminders being filed before the Principle Commissioner, the said application still lies pending.

4. The petitioner seeks for stay of the order of re-assessment, pending the application which the petitioner has filed before the Principle Commissioner. According to the petitioner, if the order of re-assessment itself is acted and implemented upon, the entire efforts of the petitioner of assailing the order rejecting application for stay and re-assessment before the Principle Commissioner and before the appellate authority respectively would get infructous.

5. This court finds that the facts of the present case are similar to the decision rendered by this court in WPT No.66/2017 dated 13/07/2017. The learned standing counsel for the Income Tax also does not dispute this aspect.

6. In view of the aforesaid factual matrix and also in the light of the order passed by this court in WPT No.66/2017, this court is inclined to dispose off the present Writ Petition also in similar terms holding that, since the petitioner has challenged the order of rejection of his application for stay by the assessing officer before the Principle Commissioner, the equity demands that the Principle Commissioner should have decided the application at the earliest and only thereafter should the department take appropriate course of action in accordance with the order that would be passed.

7. Thus, it is ordered that the Principle Commissioner may consider and decide the application preferred by the petitioner at the earliest preferably within a period of 4 weeks from the date of receipt of the certified copy. It is also ordered that pending the application before the Principle Commissioner the respondent department may not initiate any co-ercive steps for recovery pursuant to Annexure-P1 the order of re-assessment.

8. The Writ Petition thus stands allowed and dispose off.

Sd/-
(P. Sam Koshy)
Judge

Sumit