**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

## TAXC No. 19 of 2018

Smt. Meera Devi Agrawal, Legal Heir of Late Shri Narayan Prasad Agrawal, Prop. M/s. Shivnathrai Rambhajan, Raigarh, Chhattisgarh.

**---- Appellant**

**Versus**

Principal Commissioner of Income-Tax, Aaykar Bhawan, Near Vyapar Vihar, Bilaspur, Chhattisgarh.

**---- Respondent**

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|---|---|
| For Appellant | : Mr. S. Rajeshwara Rao, Advocate |
| For Respondent | : Ms. Naushina Afrin Ali, Advocate |

**Hon'ble Shri Prashant Kumar Mishra, Acting Chief Justice**
**Hon'ble Shri Parth Prateem Sahu, Judge**

**Judgment on Board**

**Per Prashant Kumar Mishra, Acting Chief Justice**

**03/04/2019**

**1.** Although this appeal has been entertained on a substantial question of law, but what we have gathered after hearing learned counsel for the parties is that for assessment year 2002-03, an assessment order was passed on 28/12/2006, against which, the matter eventually proceeded up to the Tribunal which passed the order on 31/01/2012 based on consent accorded by learned counsel for the parties for setting aside the assessment order of the Assessing Officer for fresh consideration by the Assessing Officer including the cross-objection filed by the assessee challenging invocation of the provisions of Section 147 of the Income Tax Act, 1961 (hereinafter referred to as the 'I.T. Act').

**2.** After the remit, the Assessing Officer passed fresh assessment order on 06/03/2013. Thereafter, the present impugned order has been passed by the Tribunal again setting aside the order of Assessing Officer and remitting the matter back to the Assessing Officer.

**3.** On both the occasions, the Tribunal passed the order of remand on the ground that notice under Section 148 of the I.T. Act referred to some assessment by the Sales Tax Department which had not attained finality. Therefore, since the very basis of the assessment proceeding under Section 148 of the I.T Act was based on an assessment proceeding by the Sales Tax Department, which could not be finalized, the income tax assessment should not be finalized unless the sales tax issue is finally concluded. However, after the Tribunal's impugned order, the assessee has informed Income-tax Officer-1, Raigarh on 27/03/2018 that the Sales Tax issue has also attained finality as no proceeding either on behalf of the assessee or by the Sales Tax Department is pending before the High Court.

**4.** If that is the stage of assessment undertaken by the Sales Tax Department, it is for the Tribunal to decide the matter on merits both on factual and legal score including the issue pertaining to the validity of notice under Section 148 of the I.T. Act.

**5.** Accordingly, the appeal is allowed. The impugned order dated 15/01/2018 (Annexure A/1) is set aside and the matter is remanded back to the Tribunal for deciding the assessee's appeal on merits in accordance with law. It is made clear that we have not expressed any opinion on merits of the issue which shall be dealt with by the Tribunal on the basis of the material available on record.

**6.** For the nature of order passed above by us, the substantial question is not required to be decided at this stage. It is left open to be decided at an appropriate stage, if occasion arises.

Sd/-

**(Prashant Kumar Mishra)**
**Acting Chief Justice**

Sd/-

**(Parth Prateem Sahu)**
**Judge**

Yogesh