NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 137 of 2019

Ramesh Kumar Jain S/o Late Shri Hiralal Jain, Aged About 63 Years Resident Of Navkaar Parisar, Pulgaon Naka, Raipur-491001, Chhattisgarh

---- Petitioner

Versus

1. Commissioner Of Income Tax Raipur, Aaykar Bhavan, Civil Lines, Raipur, Chhattisgarh
2. Assistant Commissioner Of Income Tax 2(1), Income Tax Office, 32/32 Bungalows, Bhilai-490001, District Durg

---- Respondents

For Petitioner	:	Mr. Neelabh Dubey, Advocate
For Respondents	:	Mr. Amit Choudhari, Ms. Naushina Afrin Ali & Mr. Ajay Kumrani, Advocates

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Hon'ble Shri Justice P. Sam Koshy
Order on Board

11/12/2019

1. Being aggrieved of the order passed by the Assistant Commissioner of Income Tax (for short "ACIT") dated 20.09.2019 (Annexure P-8) rejecting the objection filed by the petitioner in respect of reopening of the assessment of tax made for the assessment year 2014-15 under Section 147 of the Income Tax Act, 1961. The challenge is also to the notice dated 28.02.2019 (Annexure P-2) issued in this regard under Section 148 of the Income Tax Act, 1961.

2. The present writ petition was filed as early as on 15.11.2019. Today, when the matter was taken up for hearing, counsel appearing for the petitioner as also counsel appearing for the department submitted

that subsequent to the filing of the writ petition, the assessment order, in the light of Annexure P-2, has already been passed on 04.12.2019.

3. According to the counsel for the petitioner, in spite of the final order of assessment having been passed, the present writ petition is still maintainable as the writ petition has been filed only on a legal ground that of the ACIT in ordering for reassessment under Section 147 without there being any strong, cogent and tangible material available. According to the petitioner, the writ court has all the powers for testing the veracity of the order passed by the ACIT even though there is a provision of appeal. According to the petitioner, what is apparently impermissible, without authority and without any basis, can be looked into by this Court exercising the power of judicial review under the writ jurisdiction of this Court as has been settled by a series of judgments starting from the judgment of the Supreme Court in the case of Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I, Calcutta and another, AIR 1961 SC 372.

4. According to the petitioner, the action on the part of the respondents is without any basis and is liable to be set aside/quashed as there is no sufficient material available for the respondents for initiating such a proceeding. Moreover, according to the petitioner, the order of reassessment has been made only on the basis of a change in opinion and which also otherwise is not permissible. Counsel for the petitioner relied upon (2007) 292 ITR 49 (Delhi) (KLM Royal Dutch Airlines Vs. Assistant director of Income Tax, 2010 (2) SCC 723 (Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited, (1968) Volume 67 ITR 11, (2018) 406 ITR 386 (T&AP) (Kumar's

Metallurgical Corporation Ltd. Vs. Joint Commissioner of Income-Tax (Assessment).

5. Counsel for the Department, on the contrary, opposing the petition submits that in view of the subsequent development, the present writ petition has since become infructuous and the same deserves to be rejected only on this ground. According to the Department, what is under challenge is the show cause notice and the rejection of the objection which was questioned by the petitioner. Meanwhile, the order of assessment itself has been passed by the ACIT vide order dated 04.12.2019, therefore, the present writ petition in its present form, challenging the notice for reassessment and the rejection of the objection, is no longer relevant and the petition as such has become of only academic interest. Thus, prayed for rejection of the writ petition.

6. Having heard the contentions put forth on either side and on perusal of the record, this Court is in agreement to the submission made by the counsel for the petitioner as regards the authority of this Court, in the course of exercising the power of judicial review entertaining a writ petition even if there is a statutory alternative remedy available. The said issue is no longer res integra as it has been by now well settled by a catena of decisions of the Supreme Court as also of this Court that in a given case, even if there is an alternative statutory remedy available to a person, the High Court still in exercise of its power of judicial review can entertain a writ petition and decide the veracity of an order or an action.

7. But at the same time, what also cannot be lost sight of is that the Supreme Court as also this Court while taking such a view at the same breath also has held that such exercise of judicial review should not be as a matter of course or routine. The Supreme Court has time and again laying down the principle held that once when the Act provides for a complete mechanism for assessment/reassessment, imposition of penalty etc. and the Act also provides for further remedy in the event of an order passed at a lower level, the assessee should not be permitted to abandon such mechanism provided under the Act and invoking the jurisdiction of the High Court under Article 226 of the Constitution of India. Some of the recent decisions of the Supreme Court in this regard are:

i) 2014 (1) SCC 603 (Commissioner of Income Tax and Ors. Vs. Chhabil Dass Agrawal),

ii) 2009 (17) SCC 547 Bellary Steels & Alloys Ltd. Vs. Dy. Commissioner, Commercial Taxes (Assessments) and Others,

iii) 2013 AIR SCW 4675 (Commissioner of Income Tax, Gujrat Vs. Vijaybhai N. Chandrani).

8. What has also to be seen at this juncture is that the subsequent order dated 04.12.2019 i.e. the order of assessment passed on the notice under Section 148 of the Income Tax Act, 1961 is not under challenge in the present writ petition. Unless the subsequent order is challenged independently either by filing a writ petition against the said order or by amending the present writ petition seeking permission to challenge the subsequent development, this Court in exercise of its extraordinary powers under Article 226 of the Constitution of India,

only on the oral request and oral contention put forth by the petitioner, would not decide the veracity of the order dated 04.12.2019. In the absence of either of the aforesaid two courses available to the petitioner, this Court is of the opinion that the present writ petition in the light of the subsequent order of assessment being passed by the ACIT on 04.12.2019 has become infructuous.

9. The writ petition according stands dismissed as having become infructuous.

Sd/-
(P. Sam Koshy)
Judge

Khatai