NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 153 of 2019

Kamlesh Kumar Jhabak, S/o Late Shri Motilal Jhabak aged about 63 years, resident of M/s Allied Traders, Jhabak Bada, Kamasipara, Raipur, Chhattisgarh.

Versus

1. Commissioner of Income Tax Raipur, Aaykar Bhavan, Civil Lines, Raipur, C.G.
2. Assistant Commissioner of Income Tax [ACIT]4(1), Central Revenue Building, Civil Lines, Raipur.
3. Income Tax Officer, Ward 4(3), Central Revenue Building, Civil Lines, Raipur.

For Petitioner	:	Mr. Neelabh Dubey, Advocate
For Respondent/s	:	Ms. Naushina Afrin Ali with Mr. Amit Choudhary & Mr. Ajay Kumarni, Advocates.

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

17/12/2019

1. Being aggrieved by the decision of the Assistant Commissioner of Income Tax (in short 'ACIT') dated 18.11.2019 rejecting the objections filed by the petitioner in respect of reopening of the assessment of tax made for the assessment year 2013-14 under Section 147 of the Income Tax Act. The petitioner has also challenged the notice issued by the respondents under Section 148 of the Act dated 31.03.2019.

2. According to the petitioner, the proceedings initiated by the respondents is one which is totally barred by limitation and that there

is no cogent, strong, tangible material available with the respondents for initiating the proceedings of reassessment. It was also the contention of the petitioner that there is no strong legal grounds reflected while giving reasons to believe, there being an escape of assessment of certain income and the order rejecting the objections filed by the petitioner also does not reflect any substantial legal basis for sustaining the same. According to the petitioner from the documents available with the respondents it is evidently clear that there has been no material suppression of fact made by the petitioner. Neither have the department collected anything a fresh after the assessment was made at the first instance which could had been the basis for initiating reassessment proceedings.

3. Referring to the first proviso to the Section 147, contention of the petitioner is that the necessary ingredients for reopening of a assessment beyond a period of four years is not available and therefore initiation of reassessment proceedings under Section 147 is totally arbitrary and bad in law. It is further the contention of the petitioner that since there has been no fault on the part of the petitioner assigned for initiating the reassessment proceedings, it becomes bad in law on that count also.

4. The petitioner in support of his contention relief upon the judgment rendered by the Delhi High Court in the case of **Haryana Acrylic Manufacturing Company Vs. The Commissioner of Income Tax IV and Ors. decided on 03.11.2008.**

5. The Gujrat High Court in the case of **Shree Chalthan Vibhag Khand Vs. Deputy Commissioner of Income-Tax, [2015] 376 ITR 419 (Guj)** and the order passed by the Bombay High Court in the case of **Hindustan Level Ltd. Vs. R. B. Wadkar decided on 25.02.2004.**

6. Per contra, counsel appearing for the department submitted that pending the writ petition before this Court, the respondents have now passed a final assessment order itself on 17.12.2019 and as such the reassessment proceedings stands concluded and writ petition thus has become infructuous. It was the further contention of the department that now since the final order of assessment also having been passed, the said order being appealable the present writ petition should be closed at this juncture itself.

7. Given the aforesaid statements made by the learned standing counsel for the department and also taking note of the fact that the challenge in the present writ petition being only to the notice under Section 148 and also to the rejection of the objections preferred by the petitioner. It is a case where the subsequent development has rendered the present writ petition infructuous. The proceedings drawn on the notice under challenge itself has since been concluded inasmuch as a final assessment order has been passed, It is also necessary to take note of the fact that final assessment year is yet to be challenged by the petitioner.

8. In the light of the order of assessment having been passed on 17.12.2019, it leads to a situation where the issue involved in the

present writ petition becomes only an academic interest as allowing of the writ petition also would not lead to the automatic quashment of the subsequent final order of assessment dated 17.12.2019, unless the same is also questioned in a separate independent proceeding before an appropriate forum.

9. In view of the same, this Court is of the opinion that the present writ petition has become infructuous leaving open the issues raised in the present writ petition to be considered in an appropriate case and also leaving open these grounds to be agitated by the petitioner while challenging the order of assessment itself. Accordingly, the writ petition stands dismissed as having become infructuous.

Sd/-
(P. Sam Koshy)
Judge

Rohit