NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 27 of 2020

Ramesh Kumar Jain S/o Late Shri Hiralal Jain Aged About 63 Years R/o Navkaar Parisar, Pulgaon Naka, Durg, 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, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Neelabh Dubey, Advocate
For Respondents	:	Mr. Amit Chaudhari, Advocate with Ms. Naushina Afrin Ali, Advocate and Mr. Topilal Bareth, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/02/2020

1. The challenge in the present writ petition is to the reassessment order passed on 04.12.2019 under Section 144 read with Section 147 of the Income Tax Act.

2. The challenge to the said order by the petitioner is on the ground that the Department has proceeded and decided the reassessment proceedings without considering the response that the petitioner has submitted to the notice under Section 142(1) issued on 27.11.2019. For ready reference, the relevant portion of the impugned order dated 04.12.2019 is reproduced hereinunder:-

> "Fresh notice u/s 142(1) was again issued on 27.11.2019 mentioning therein as "**Final Opportunity**" fixing the case on 29.11.2019. Assessee filed an application through system requesting adjournment for three days. Even after his request for three days adjournment, the assessee did not turn up. He has not furnished/explained the issues mentioned in the questionnaire issued on 16.11.2019. In the absence of any reply explaining the issues and considering the limitation factor involved in this case,

> there is no other alternative left with the undersigned except to complete the assessment ex-parte as per material available on record. After examining the case in detail, the assessment is completed u/s 144 r.w.s. 147 of the Act with the following observations."

3. The counsel for the petitioner at this juncture refers to Annexure P/10 & 11, which is an e-Receipt of the proceedings drawn on the notice under Section 142 read with Section 147 of the Income Tax Act. In Annexure P/10, the acknowledgment part would show that the petitioner on 29.11.2019 had sought for three days time for filing of his reply/submission. The receipt again dated 03.12.2019 would show that the petitioner in fact had submitted his response on 03.12.2019 i.e. submission of 9 pages attachment. The details of attachment also is reflected from the said receipt. However, the Assessing Officer while passing the impugned order seems to have skipped this part as also the response submitted by the petitioner and has decided by proceeding as if the petitioner has not submitted any response to the notice under Section 142 inspite of time being granted and the time further being extended for three days. The said findings of the Assessing Officer seems to be in conflict with the order sheet reflecting in the e-Receipt dated 29.11.2019 as also dated 03.12.2019.

4. Once when the petitioner was able to show that he has submitted his written submission of 9 pages on 03.12.2019, it appears that the same has not been considered by the Assessing Officer while passing the impugned order.

5. Under the circumstances, in the interest of justice it would be more appropriate if the matter stands remitted back to the Assessing

Authority for reassessing the case of the petitioner after taking into consideration the submissions that the petitioner has submitted on 03.12.2019 and a fresh order be passed.

6. Accordingly, the impugned order dated 04.12.2019 as of now stands set-aside/quashed and the matter stands remitted back to the respondent No.2 for passing a fresh proceeding after taking into consideration the submissions that the petitioner has submitted on 03.12.2019.

7. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved