NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 52 of 2020

1. M/s Ashok Vihar, A Partnership Firm Having Its Office At Shop No. 182, Atlani Corporation, Jeevan Bima Marg, Pandri Raipur, Chhattisgarh, Through Its Partner Rajesh Atlani, S/o Late Shri Golaram Atlani, Aged About 55 Years, R/o Behind Shiv Mandir, Khamardih, Shankar Nagar, District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. The Principal Commissioner Of Income Tax-1, Aaykar Bhawan, Civil Lines, District : Raipur, Chhattisgarh
2. The Commissioner Of Income Tax (Appeals), Aaykar Bhawan, Civil Lines, District : Raipur, Chhattisgarh
3. Income Tax Officer, Ward No. 3(4) Aaykar Bhawan, Civil Lines, District : Raipur, Chhattisgarh
4. Tax Recovery Officer - (Asstt) – 1, Aaykar Colony Type - 5, Civil Line District : Raipur, Chhattisgarh

---Respondents

For Petitioner	: Mr. Anand Dadariya, Advocate
For Respondents	: Mr. Amit Choudhari and Ms. Naushina A. Ali, Advocate

---

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19.03.2020

1. The present writ petition has been filed seeking for an appropriate direction to the respondent no. 2 to decide the pending appeal of the petitioner at the earliest. The further relief is that pending the appeal before the respondent no. 2, the respondents may not initiate any coercive steps for recovery of the amount as per the demand notice.

2. The facts of the case is that, the issue involved in the present writ petition is in-respect of the Assessment Year 2013-14. According to

the counsel for the petitioner, the petitioner had filed a return on 31.03.2014 giving income tax as Rs. 1,56,520/-. Subsequently, the case of the petitioner was subjected to the CASS selection and scrutiny and the respondent department under Section 143 (3) of the Income Tax Act, 1961 passed assessment order whereby the authorities found that the petitioner has suppressed an income of Rs. 7,43,77,220/-. The said order of the assessment was dated 30.03.2016 against which the petitioner preferred an appeal before the respondent no. 2 on 20.04.2016.

3. According to the counsel for the petitioner, the said appeal is still pending consideration and meanwhile, the respondents have also issued a demand notice against him. Subsequently, now summons were issued under Rule 83 of the Schedule-II of the Income Tax Act, 1961 calling upon the petitioner to give attendance and/or produce either personally or through an authorized representative the books of accounts and/or other documents and not to depart until you receive permission.

4. The counsel for the petitioner submits that in view of the circular dated 29.02.2016, which stands further modified subsequently vide circular dated 31.07.2017, the petitioner has moved an application for stay of the demand notice pending the appeal. The said application has been moved before the assessing officer way-back in the year 2016 i.e. on 28.04.2016 and the said application is still pending. The counsel for the petitioner submits that on one hand, the application of the petitioner for stay of the demand notice is pending consideration before the assessing officer and at the same time, the respondent no. 4 have issued Annexure P-5 dated 05.11.2019 calling the petitioner

to produce on record the details and the subsequent summons being issued including reminders which have been issued to the petitioner in this regard. At this juncture, the limited prayer that the petitioner has made is that, let appropriate direction be given to the concerned authorities, firstly, directing the assessing officer to decide the application for stay of the demand notice pending the appeal and secondly, directing the appellate authority also to take a decision on the appeal at the earliest.

5. To the limited relief that the petitioner confines in the present writ petition, the counsel appearing for the Income Tax Department does not oppose.

6. Given the facts that the application for stay of the petitioner is pending consideration before the assessing officer since 28.04.2016 ends of justice would meet, if the respondent no. 3 is directed to take a decision on the application for stay in-accordance with law at the earliest. It is expected that while taking a decision, an opportunity be given to the petitioner. Needless to mention that this Court while disposing-off the petition also expects that the respondent no. 2 i.e., the appellate authority to decide the appeal also of the petitioner which again is pending since 2016, at the earliest in-accordance with law.

7. The writ petition accordingly stands disposed-off. Given the aforesaid direction of this Court, it is expected that that respondents shall not initiate any coercive steps till the application for stay is pending consideration before the assessing officer.

Sd/-
(P. Sam Koshy)
Judge

Rahul