NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 434 of 2019

{Arising out of order dated 05.04.2019 passed by the learned Single Judge in Writ Petition (T) No. 234 of 2018}

1. M/s Precision Engineering a Proprietorship Firm having its office at HIG-14, SBVP Nagar, SADA Colony, Jamnipali, Korba (C.G.) through its proprietor Idicula Jacob, aged about 65 years, S/o Shri Idicula, R/o HIG-14, SADA Colony, Jamnipali, Korba (C.G.)

2. Idicula Jacob, S/o Shri Idicula, aged about 65 years, R/o HIG-14, SADA Colony, Jamnipali, Korba (C.G.)

---- Appellants

Versus

1. Assistant Commissioner of Income Tax Circle-Korba, Office of Assistant Commissioner of Income Tax Circle-Korba, Mahanadi Complex, Niharika Road, Korba (C.G.)

2. Joint Commissioner of Income Tax, Range-Korba office of Joint Commissioner of Income Tax, Range-Korba, Mahanadi Complex, Niharika Road, Korba (C.G.)

3. Union of India through its Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi - 110001

---- Respondents

For Appellant	:	Shri Siddharth Dubey, Advocate.
For Respondent-Revenue	:	Shri Amit Chaudhari with Ms. Nausina Afrin Ali, Advocates.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

15.01.2020

1. Heard on I.A. No. 1 of 2019, application for condonation of delay in filing the present appeal.

2. For the reasons mentioned in the application, delay of 33 days in filing the appeal is hereby condoned and the appeal is heard finally.

3. The correctnesses and sustainability of the verdict passed by the learned Single Judge declining interference with regard to the challenge raised as to re-assessment proceedings under Section 147, read with Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is under challenge in this appeal.

4. Heard Shri Siddharth Dubey, learned counsel for the appellants as well as Shri Amit Chaudhri and Ms. Naushina Ali, learned standing counsel representing the respondent-revenue.

5. The sequence of events reveals that the appellant Proprietorship concern submitted necessary returns for the assessment year 2012-13 and satisfied by the tax accordingly. However, based on some information collected by way of Survey under Section 133(A) of the Act, the adjudication officer initiated proceeding for re-assessment of the income and notice was issued under Section 148 of the Act, which made the writ petitioner/assessee to challenge it by filing writ petition.

6. The nature of challenge was considered and after hearing both the sides, the learned Single Judge observed that, it was a matter which could be effectively challenged by approaching the statutory authority. Accordingly, the writ petition was dismissed, without prejudice, which has given rise to the present appeal.

7. Learned counsel for the appellant submits that the relegation of the appellant to move the statutory authority is not correct, insofar as, in respect of the disputed portion, the tax was already been paid by the appellant and this should have been properly looked into by the authorities and also by the learned Single Judge.

8. The learned standing counsel for the department of revenue submits that the version of the assessee is not correct as such and that, it is more a question of fact. After hearing, we are of the view that the matter involves some fact finding exercise and the same can be effectively prosecuted before the competent authority under the statute, which cannot be a matter for discussion and finalization invoking the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

9. In the said circumstances, we do not find any irregularity, much less any illegality, with regard to the course ordered to be pursued by the learned Single Judge. The appeal fails and it is dismissed accordingly. However, we make it clear that we have not expressed anything with regard to the merit of the case. It is always open for the appellant to establish the merit of the case before the statutory authority, based on the facts and the relevant provisions of law.

10. It is further made clear that the specific case projected by the appellant/writ petitioner that, he having satisfied the tax, it would be a case of 'double taxation' shall also be considered and specifically answered by the competent authority while pursuing the proceedings as aforesaid.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan