

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 05.02.2020****Judgment Delivered on 14 .02.2020****Writ Appeal No. 399 of 2019***{Arising out of order dated 05.04.2019 passed by the learned Single Judge in Writ Petition (T) No. 70 of 2018}*

1. Hariom Rice Mill Private Limited NH-200, having its office at Masturi Road, Post and Village Darrighat, Bilaspur-495001, (C.G.) through its director Mr. Subhash Agrawal, aged about 48 year's, s/o Radheshyam Agrawal, r/o B-104, Sheela Park (C.G.)
2. Mr. Subhash Agrawal, S/o Radheshyam Agrawal, aged about 48 years, r/o B-104, Sheela Park, Raj Kishore Nagar, Bilaspur (C.G.)

---- Appellants**Versus**

1. Assistant Commissioner of Income Tax Circle-2(1), Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur (C.G.)
2. Principal Commissioner of Income Tax, Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur (C.G.)
3. Income Tax Officer-2(1), Bilaspur, Office of Income Tax Officer-2(1), Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur (C.G.)
4. Income Tax Officer (Tech. & TPS-2) Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur (C.G.)
5. Union of India through its Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi - 110001.

---- Respondent**Writ Appeal No. 337 of 2019***{Arising out of order dated 05.04.2019 passed by the learned Single Judge in Writ Petition (T) No. 69 of 2018}*

1. Hariom Rice Mill Private Limited NH-200, having its office at Masturi Road, Post And Village Darrighat, Bilaspur-495001, (C.G.). through its director Mr. Subhash Agrawal, aged about 48 year's s/o Radheshyam Agrawal, r/o B-104, R.K. Nagar, Sheela Park (C.G.)
2. Mr. Subhash Agrawal, s/o Radheshyam Agrawal, aged about 48 years, r/o B-104, Sheela Park, Raj Kishore Nagar, Bilaspur (C.G.)

---- Appellants

Versus

1. Assistant Commissioner of Income Tax Circle- 2(1) Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur, Chhattisgarh.
2. Principal Commissioner of Income Tax, Bilaspur Aaykar Bhawan, Vyapar Vihar, Bilaspur, Chhattisgarh.
3. Income Tax Officer-2(1) Bilaspur, Office of Income Tax Officer-2(1), Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur, Chhattisgarh.
4. Income Tax Officer(Tech. & TPS-2) Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur, Chhattisgarh.
5. The Union of India Through its Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.

---- Respondents**Writ Appeal No. 479 of 2019**

{Arising out of order dated 05.04.2019 passed by the learned Single Judge in Writ Petition (T) No. 235 of 2018}

1. M/s Aaditya Construction a partnership firm registered under the Indian Partnership Act, 1932 having its office at 56, Indira Commercial Complex, Transport Nagar Korba, (C.G.) through its partner Mr. Amit Kumar Dalmia, aged about 41 years, s/o Mr. Sumer Mal Dalmia, r/o B-7, Housing Board Colony, Balco Nagar, Korba (C.G.)
2. Mr. Amit Kumar Dalmia, s/o Mr. Sumer Mal Dalmia, aged about 40 years, r/o B-7, Housing Board Colony, Balco Nagar, Korba (C.G.)

---- Appellants**Versus**

1. Principal Commissioner of Income Tax, Bilaspur, office of Principal Commissioner of Income Tax, Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur (C.G.)
2. Income Tax Officer Ward-1, Korba, Office of Income Tax Officer Ward-1, Korba, Mahandi Bhawan, Niharika Road, Korba (C.G.)
3. Joint Commissioner of Income Tax, Range-2, Bilaspur, office of Joint Commissioner of Income Tax, Range-2, Bilaspur, Aaykar Bhawan, Vyapar Vihar, Bilaspur (C.G.)
4. Union of India through its Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi - 110001.

---- Respondents

For Appellants	:	Shri Siddharth Dubey, Advocate.
For Respondent	:	Shri Amit Chaudhari, Ms. Naushina Afrin Ali and Shri Topilal Bareth, Advocates.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Justice Parth Prateem Sahu, Judge

CAV Judgment

Per P. R. Ramachandra Menon, Chief Justice

1. Dismissal of the writ petition filed by the Appellant/Assessee challenging the approval granted in terms of the Section 151 (1) of the Income Tax Act, 1961 (for short, 'Act of 1961') to reopen the assessment and to quash the notice issued under Section 148 of the Act of 1961 in this regard, after holding that the statutory requirement has been complied with and accordingly relegating the writ Petitioner to avail the statutory remedy by way of appeal; more so since the assessment proceedings had also been finalized in the meanwhile, made the Assessee/writ Petitioners to feel aggrieved and hence the appeal.
2. Heard Shri Siddharth Dubey, the learned counsel for the Appellants as well as Ms. Naushina Afrin Ali, the learned standing counsel for the Respondent/Department at length.
3. When the matter is taken up for consideration, maintainability of the appeal was raised as the first point to be considered, especially in the light of the relevant statutory provisions and as to the satisfaction of the procedural formalities. The learned counsel for both the sides addressed the Court accordingly. To consider the matter effectively, it will be necessary to have some idea as to the factual sequence as well.
4. Writ Appeal No. 399 of 2019 arising from the Writ Petition (T) No. 70 of 2018 is stated as the lead case and the parties and proceedings are referred to as given in the said writ appeal/writ petition.

5. The Appellant-Company is an Assessee on the rolls of Respondent/Department and scrutiny assessment for the assessment year 2012-13 was completed under Section 143(3) of the Act of 1961 on 08.01.2014. Four years later, a notice of reassessment under Section 148 of the Act of 1961 was issued to the Appellant/Assessee on 07.02.2018. On receipt of the said notice, the Appellant/Assessee requested for furnishing the reasons recorded under Section 148(2) of the Act of 1961, by submitting an application dated 22.02.2018 addressed to the competent authority; which came to be supplied on 22.02.2018. An application was submitted on 07.03.2018, to furnish approval/sanction accorded in terms of Section 151(1) of the Act of 1961 which led to issuance of notice under Section 148(2) of the Act of 1961. On receipt of the reasons recorded for issuing notice under Section 148(2) of the Act of 1961, it was sought to be objected by filing statement of objections on 22.03.2018. It is the case of the Appellant/Assessee that the said objections were considered in a quite mechanical manner and turned down on the very same day, as per order dated 23.03.2018, with intent to proceed with further steps, which hence was sought to be challenged by filing writ petition before this Court. Similar nature of challenge is involved in the connected cases as well.
6. Shri Siddharth Dubey, the learned counsel for the Appellants submits that the reassessment proceedings have been initiated absolutely without any 'reason to believe' as to the escape of any income from assessment. As per the relevant provisions of law and the binding judgments rendered by the Apex Court and various High Courts on the point, the condition precedent should exist and be satisfied for reopening the assessment, which is stated as lacking in the instant case. It is also stated there is no nexus or basis for the proceedings and no tangible material is there to hold that there was 'reason to believe' for initiating the reassessment proceedings.

7. It is also the case of the Appellant/Assessee that all the relevant materials had been furnished by the Assessee and that there was no instance of any relevant fact, either whole or in part in respect of the scrutiny assessment finalized on 08.01.2014; under which circumstances no reassessment proceedings could have been initiated or pursued merely on the basis of conjunctures or surmises. The learned counsel submits that each case has to be considered on the basis of its merit with regard to the satisfaction of the statutory requirements which in the instant case is conspicuously absent and hence the various rulings rendered by the Apex Court, as referred to by the learned Single Judge while declining interference, are not applicable.

8. It cannot be held that no writ petition/appeal is maintainable, merely for the reason that the assessment had already been finalized. Support is sought to be drawn by the Appellants from the rulings rendered by the Apex Court in ***Calcutta Discount Co. Ltd. vs. Income Tax Officer, Companies District I Calcutta & Another*** reported in **AIR 1961 SC 372** and ***Khoday Distilleries Limited (now known as Khoday India Limited) & Another vs. Sri Mahadeshwara Sahakara Sakkare Karkhande Limited, Kollegal*** reported in **(2019) 4 SCC 376** which reiterates the law declared in ***Kunhayammed & Others vs. State of Kerala & Another*** reported in **(2000) 6 SCC 359**. The learned counsel also sought to draw distinction from the position considered and decided by the co-ordinate Bench in Writ Appeal No. 293 of 2017.

9. Ms. Naushina Afrin Ali, the learned standing counsel appearing for the Respondent/Department submits that the scrutiny assessment was finalized in terms of Section 143 of the Act of 1961, based on the return submitted by the Appellant/Assessee. Later, in the course of survey under Section 133A of the Act of 1961, various incriminating materials were brought to light and statement of the Assessee was taken. The materials collected revealed that share transfers were done in respect of various shell companies and there was a

conscious attempt of defrauding the revenue because of the escaped income from assessment. It was accordingly, that necessary proceedings were initiated and approval of the competent authority, in terms of Section 151(1) of the Act of 1961, was obtained. After getting approval as above, statutory notice was issued under Section 148(2) of the Act of 1961 to the Assessee. The reasons recorded were furnished to the Assessee on application. The objections preferred were considered with proper application of mind and it was repelled accordingly. It was after analysis of the facts and figures in the light of the relevant provisions of law and binding precedents, that the reassessment was finalized. Instead of challenging the reassessment by way of effective alternative remedy available under the statute, the Assessee simply rushed to this Court by filing the writ petitions. The learned Single Judge referred to the sequence of events, the relevant provisions of law and almost all the relevant judgments on the subject and recorded satisfaction on the procedure followed. It was accordingly, that interference was declined and the writ petitions were dismissed, setting the Appellant/Assessee at liberty to file statutory appeals, if aggrieved, which is correct and proper in all respects. The learned counsel submits that there is no violation of any principle of natural justice, nor the proceedings are in violation of statutory provisions and no such instance, to the contrary, has been demonstrated by the Appellant/Assessee.

10. It is brought to the notice of this Court by the learned standing counsel for the Respondents that the dictum laid down by the Constitution Bench of the Apex Court in ***Calcutta Discount (supra)*** sought to be relied on by the Appellants is not applicable to the case in hand. It was also a case which involved the sale of shares, which, of course was disclosed in the return, but notice of reassessment was issued to the Assessee to show the intention of sale and the proceedings were pursued and finalized accordingly. Ultimately, the matter ended up in the Supreme Court, when it was observed that the Assessee was

only to give actual particulars with regard to the transaction to the authorities and it was not necessary for disclosing the intention for selling the shares; which made the Court to intervene and pass the verdict in favour of the Assessee. This does not come to the rescue of the Appellants. It is pointed out with respect to the materials on record that the procedural requirements as explained by the Apex Court in ***GKN Driveshafts (India) Ltd. vs. Income Tax Officer & Others*** reported in **(2003) 1 SCC 72** stand satisfied and that statutory appeal is the appropriate remedy.

11. It is further pointed out that, some of the similar issues as involved in the present case were considered in the case of Assessee by name Kamala Ojha vs. Income Tax Officer 1 & Others in SLP No. 38102 of 2019. The notice and such other proceedings were subjected to challenge in the writ petition and during pendency of the writ petition, the final assessment order was passed. The learned Single Judge allowed the main prayers which was the subject matter of challenge in the appeal preferred by the Revenue (in Writ Appeal No. 293 of 2017). The Division Bench held that the course pursued by the learned Single Judge was not correct and accordingly, the judgment in the writ petition was set aside and the appeal preferred by the Revenue was allowed in the following terms:

“33. To sum up the matter, when there existed reason to belief which is formed on the basis of material available having nexus with the subject, writ Court ought not to have entertained the writ petition more so when assessment order have already been passed during pendency of the writ petition, therefore, we set aside the order passed by the writ Court and relegate the writ petitioner to prefer an appeal against the reassessment order which may be filed within a period of 30 days from today. The writ petitioner would be at liberty to raise all grounds both factual and legal in the said appeal. The appellate authority shall entertain the appeal for decision on merits without raising objection as to limitation.”

Though the Assessee took up the matter by filing the SLP before the Apex Court, after condoning the delay, the SLP came to be dismissed; however, granting liberty to file statutory appeal within three weeks and to have it disposed off on merits. It is true that no principle of merger is attracted because of the dismissal of the SLP, but we find no reason to differ from the view taken by the Division Bench in the writ appeal, with reference to the course to be pursued.

12. When the procedural requirements are satisfied, whether the inference drawn is based on the relevant materials or not is a matter which may involve a fact adjudication. This is not possible at the hands of this Court, in exercise of the jurisdiction under Article 226 of the Constitution of India. In other words, the nature of contentions raised by the Appellant/Assessee is with regard to the satisfaction of the reasons for reopening the assessment after four years. The approval granted and the reasons which made the Income Tax Officer to believe that some income had escaped assessment have to be tested with regard to the actual facts and figures. This comes within the scope of alternative remedy by way of appeal and no prejudice can be stated as caused to the Appellant/Assessee in this regard. To put it more clear, it is not a case where mere question of law is involved; such as violation/non-satisfaction of the particular provisions or as to lack of competency of the authority who has passed the order for proceeding further. Under similar circumstance, we have declined interference, without prejudice to pursue statutory remedy, as per judgment dated 29.07.2019 in Writ Appeal 336 of 2019, a copy of which is placed for perusal from the part of the Respondents.
13. The learned standing counsel for the Respondent/Revenue submits that assessment proceedings were finalized in respect of 'five' different assessment years and hence five different writ petitions came to be filed by the Appellants/Assessee. Among the 'five', two writ petitions have already been

withdrawn and the Assesseees have chosen to avail the statutory remedy. As it stands so, no differential treatment is warranted in respect of the present appeals.

14. In the above facts and circumstances, we hold that these appeals are not maintainable and accordingly they are dismissed. This is without prejudice to the rights and liberties of the Appellants/Assessee to move the statutory authority by way of appeal in accordance with law. It is further made clear that, our discussion is only to the extent of considering the maintainability and no opinion is expressed with regard to the merits involved.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge