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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 715 of 2018

{Arising out of order dated 26.04.2018 passed by the learned Single Judge in Writ Petition (T) No. 217 of 2009}

1. Assistant Commissioner of Income Tax, Circle 1(1), Aaykar Bhawan, Vyapar Vihar, Bilaspur (C.G.)

2. Commissioner of Income Tax, Bilaspur (C.G.), Aaykar Bhavan, Vyapar Vihar, Bilaspur (C.G.)

3. Chief Commissioner of Income Tax (C.G.), New Central Revenue Building, Civil Lines, Raipur, Chhattisgarh.

4. Central Board of Direct Taxes, Through Secretary, North Block, New Delhi.

5. Union of India, Through Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.

6. Director General of Income Tax (Exemption), Plot No. 15, II Floor, Laxmi Nagar, District Centre, New Delhi.

---- Appellants

Versus

- State Bar Council of Chhattisgarh, A body corporate under section 5 of the Advocates Act, 1961, situated at High Court Premises, Bilaspur (C.G.), through its officer on Special Duty and officiating Secretary, V.A. Narayanan, (Petitioner/ Assessee in Writ Petition)

---- Respondents

For Appellant	:	Shri Amit Chaudhari and Ms. Naushina Afrin Ali, Advocates.
For Respondent	:	Shri Neelabh Dubey, Advocate.

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

Per P. R. Ramchandra Menon, Chief Justice

10.02.2020

1. Heard on I.A. No. 1 of 2018, which is an application for condonation of delay of 79 days in filing the writ appeal. For the reasons stated in the application, it is allowed and the delay in filing of appeal is condoned.

2. Heard Shri Amit Chaudhari and Ms. Naushina Afrin Ali, the learned counsel for the Appellant/Department as well as Shri Neelabh Dubey, the learned counsel appearing for the Respondent/Assessee.

3. The learned standing counsel for the Appellant submits in response to the query raised by this Court on 20.01.2020 with reference to the applicability of the Circular No. 3/2018 dated 11.07.2018 that, as categorically mentioned in paragraph 11, the monitory limits mentioned therein shall not apply to writ matters and hence it is not relevant. We hold it accordingly.

4. Correctness and sustainability of the common verdict passed by the learned Single Judge, virtually allowing the writ petition filed by the State Bar Council of Chhattisgarh with regard to the course and proceedings pursued by the Income Tax Department in declining the exemption sought for in terms of Section 10(23A) of the Income Tax Act, 1961 (for short, 'Act of 1961') and assessing the income in respect of the year 2004-05 fixing the liability to the tune of Rs. 20,66,186/- is put to challenge in this appeal.

5. There is no dispute with regard to the facts and figures. The Respondent/Assessee is a statutory body constituted in terms of Section 3 of the Advocates Act, 1961 (for short, 'Advocates Act'). The State Bar Council was the same for the erstwhile undivided State of Madhya Pradesh and by virtue of the nature and operation of the institution, exemption was granted by the Central Board of Direct Taxes (CBDT) in terms of the Section 10(23A) Act of 1961. While so, the State was divided into two, carving out the State of Chhattisgarh, from the erstwhile undivided State of Madhya Pradesh pursuant to the Section 24(2) of the Madhya Pradesh Reorganization Act, 2000 (for short, 'Act of 2000') with effect from 01.11.2000. By virtue of the turn of events, a separate Bar council known as the 'State Bar Council of Chhattisgarh' came into existence and was discharging the statutory duties conferred upon the Bar

Council as above, in terms of the Advocates Act. In the meanwhile, returns were submitted by the Respondent/Bar Council in respect of the years 2004-05 and 2005-06 claiming exemption, as it was being enjoyed hitherto in the erstwhile undivided State of Madhya Pradesh. But the Assessing Officer, observing that no specific exemption certificate in favour of the Chhattisgarh State Bar Council was produced, the exemption was disallowed. Rs. 40,98,770/- was reckoned as the income and the tax liability was fixed to an extent of Rs.20.66,186/- which was required to be satisfied. Met with the situation, the Respondent/Bar Council took up the matter before the Appellate Authority in respect of the year 2004-05 where interference was declined, in turn leading to a further appeal before the Tribunal. After hearing, the matter was remanded by the Tribunal to the Assessing Officer observing that the Assessee/Bar Council had already moved this Court by filing Writ Petition (T) No. 6095 of 2007 which was pending and hence to pursue further steps in tune with the verdict to be passed by this Court in the writ petition.

6. It is relevant to note in this context, that the Respondent/Bar Council had in the meanwhile moved the Board (CBDT) by filing an application for exemption which was considered and allowed, granting exemption from '2006-07' onwards. It was sought to be extended with effect from the previous years as well, but the same was not acceded to and hence, a writ petition was filed before this Court challenging the course and events.

7. The relief sought for in the writ petition was opposed by the Appellant/Department pointing out that, as per the scheme of statute, unless there was a specific order granting exemption in terms of Section 10(23A) of the Act of 1961, no relief could be extended. It is an admitted fact that the earlier exemption enjoyed by the Bar Council was in respect of the Bar Council of the undivided State and after the formation of the new State, it was obligatory

for the Chhattisgarh State Bar Council also to have made an application and to have obtained a proper order granting exemption in terms of Section 10(23A) of the Act of 1961. In the absence of such order, it was contented that the proceedings pursued by the Department was perfectly within the four walls of law and not assailable under any circumstances.

8. After hearing both the sides, the learned Single Judge passed a common verdict referring to the various provisions and in particular, Section 2(f), read with Sections 78 and 79 of the Act of 2000, simultaneously referring to the relevant provisions of the Advocates Act as well. Scrutiny was made and a finding, was rendered, particularly, in the light of the functions to be discharged by the State Bar Council. It was accordingly held that the course pursued by the Respondent/Department was not correct or sustainable and a declaration was made to the effect that the State Bar Council was entitled to get exemption, which was to be have an effect from the previous years as well; thus, allowing the writ petition, which is now put to challenge in this appeal.

9. During the course of hearing, it is virtually conceded that there is no dispute with regard to the genesis of the case; particularly, as to the formation of the new State of Chhattisgarh, after having the same carved out from the erstwhile undivided State of Madhya Pradesh. It is also a fact conceded that there has to be only one Bar Council for the entire State as per the scheme of the Advocates Act and that the Bar Council of the undivided State was granted exemption in terms of Section 10(23A) of the Act of 1961. After formation of the new State of Chhattisgarh, pursuant to the Act of 2000, the erstwhile Bar Council came to be separated as two different Bar Councils. Needless to say that a formal application had to be submitted by the Chhattisgarh State Bar Council for continuing to enjoy the benefit of exemption, but that is only a technical and procedural formality, insofar as the formation of new State and formation of the

new State Bar Council is a statutory consequence. This being the position, this Court is of the firm view that the analysis made by the learned Single Judge with regard to the course pursued by the Department and declaration of eligibility of the Chhattisgarh State Bar Council to get exemption in terms of Section 10(23A) of the Act of 1961 are not liable to be interdicted in any manner.

10. We do not find any merit in the appeal. The appeal stands dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan