

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.261 OF 2020

Deepak Kochhar ... Petitioner
Vs.
Deputy Commissioner of Income Tax, Circle 3(2)(2)
and others ... Respondents

Mr. J. D. Mistry, Senior Advocate a/w. Mr. Madhur Agarwal i/b. Mr. A. K. Jasani for Petitioner.
Mr. Sham Walve a/w. Mr. Pritesh Chatterjee for Respondent Nos.1 and 2.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

DATE : JANUARY 24, 2020

P.C. :

Heard Mr. Mistry, learned senior counsel assisted by Mr. Agarwal, learned counsel for the petitioner and Mr. Walve, learned standing counsel Revenue for respondent Nos.1 and 2.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has assailed legality and validity of the impugned assessment order dated 28.12.2019 passed by the Assessing Officer i.e., respondent No.1 under Section 143(3) of the Income Tax Act, 1961 (briefly “the Act” hereinafter) read with Section 147 of the said Act.

3. The assessment pertains to the assessment year 2012-13.

4. Mr. Walve, learned standing counsel raises a preliminary objection regarding availability of alternative remedy which the petitioner has not availed. Therefore, he submits that petitioner may be relegated to the forum of alternative remedy.

5. Mr. Mistry has referred to the impugned assessment order dated

28.12.2019 and submits that a sum of Rs.394,46,61,260.00 was added to the income of the assessee under Section 56(1) of the Act as benefit received on account of receipt of share premium by the assessee by way of getting control and management of M/s. NRPL during the relevant previous year. He submits that this addition was made without any notice to the petitioner and without hearing the petitioner. That apart, the addition is devoid of any deliberation by the Assessing Officer leading to such addition.

5.1 He submits that when there is absolute violation of the principles of natural justice, question of availing the alternative remedy would not arise. However on a query by the Court, he submits that petitioner is not shying away from contesting this addition and will file an appeal as provided under the Statute.

6. Mr. Walve submits that it is not correct to say that there is violation of principles of natural justice inasmuch as ample opportunity was granted to the petitioner.

7. After hearing learned counsel for the parties and on due consideration, Court is of the view that petitioner may file appeal under Section 246-A of the Act before the first appellate authority against the assessment order dated 28.12.2019 within a period of four weeks from today. It is also open to the petitioner to file an application for stay along with the appeal in which event the same shall be considered by the appellate authority in accordance with law.

8. Ordered accordingly.

9. To enable the petitioner to avail his remedy as provided under the Statute and till such time, the application for stay is decided by the first appellate authority, the assessment order dated 28.12.2019 shall be kept in abeyance.

10. Needless to say we have not expressed any opinion on merit and all contentions are kept open. It is also made clear that if the appeal order goes against the petitioner, the same shall also be kept in abeyance for a period of two weeks from the date of receipt of the order to enable the petitioner to avail the statutory remedy as provided under the Act.

11. Writ petition is disposed of.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

Minal Parab