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02.02.2021
Mithun

**Calcutta High Court**
**In the Circuit Bench at Jalpaiguri**
**Appellate Jurisdiction**

**WPA 833 of 2019**

Mantu Sah
-versus-
Income Tax Department & Ors.

Mr. Amit Sinha, Adv.

…For the Petitioner.

Mr. Sudipto Mazumdar, Ld.A.S.G.,
Ms. Ashok Ghosh, Adv.
…for Union of India & Ors.

The grievance of the petitioner is that he won first prize in a lottery conducted by the Nagaland State Lottery on 12th May, 2016. The amount of prize was Rs. 25,00,000/-. After winning the first prize, he contacted the distributor from whom he purchased the ticket, under the name and style of "Maa Tara Lottery Distributor" at Siliguri. He was paid a sum of Rs.16,80,000/- by the Distributor. Then on his way to his house he was intercepted by the police authority at Baisi Police Station. Police recovered a sum of Rs.14,00,000/- from whom as uncounted amount. Subsequently a proceeding was initiated under the Income Tax Act and he was directed to pay income tax of Rs.7,47,981/- by the Assistant Commissioner of Income Tax, Circle 2, Siliguri within 30 days through bank payment from the date of the order. The said demand notice under Section 156 of the Income Tax Act could not be complied by the petitioner because his entire money was seized by the Income Tax Authority at Baisi, Purnia, Bihar. However, for non-payment of income tax, a penalty order was passed under Section 271 AAB of the said Act and the petitioner was directed to pay a sum of Rs. 12,51,981/- towards payment of tax. It is ascertained from Annexure P-6 that the said amount was calculated adding a sum of Rs. 5,04,000/- with the initial amount of Rs.7,47,981/-.

The petitioner being aggrieved with the said order has filed the instant writ petition. It is submitted by the learned Advocate for the petitioner that the petitioner is under obligation to pay income tax because income from lottery is admittedly income from other sources. However, the Income Tax Authority could have deducted the assessed amount of income tax by adopting the procedure contained in Clause ( c) and (d) of Section 158 BC of the said Act. He also refers to the various provisions of Section 132 (B) (i) and (ii).

Placing reliance on the above-mentioned provisions, it is submitted by the learned Advocate for the petitioner that the assets of the petitioner consists solely on money. Therefore, the Assessing Officer may apply such money in the discharge of the liabilities referred to in Clause I and the assessee shall be discharged of such liability to the extent of the money so apply.

Learned Advocate for the respondent, on the other hand, has challenged the maintainability of the instant writ petition referring to Section 246 of the Income Tax Act. It is submitted by the learned Counsel for the respondent that the assessment order passed by the Assistant Commissioner of Income Tax, Circle-2, Siliguri is an appealable order. The petitioner could have filed the appeal within 30 days from the date of service of the notice. The notice was admittedly served upon the petitioner as it has been annexed at Page-36 of the petition. In the said notice, the stipulated period of the statutory appeal was clearly stated. Under such circumstances, where there is efficacious remedy in the Income Tax Act, the instant petition under Article 226 of the Constitution of India is not at all maintainable.

Having heard the learned Advocates for the parties, this Court is of the view that the petitioner, of course, did not afterthought, recourse of Sections 246 and 249 of the said Act. However, the petitioner diligently and with all bona fide carried on the instant proceeding under Article 226 of the Constitution.

For the reasons stated above, the instant writ petition is disposed of giving liberty to the petitioner to file a statutory appeal under Section 246 of the said Act.

In filing the appeal if some amount is required to be deposited with appellate authority, the petitioner is permitted to apply the income tax authority to allow him to make such payment from the seized amount because after all the seized amount admittedly was won through lottery and it belonged to the petitioner

The Appellate Authority is requested to dispose of the appeal expeditiously. This Court, it is made clear, has not touched upon any situation as to the merit of the appeal and all issues that may be raised by both the parties are open for consideration by the Appellate Authority.

The instant writ petitioner is, thus, disposed of.

**(Bibek Chaudhuri, J.)**