NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WPT No. 175 of 2021

M/s Agrawal Global Infratech Private Limited Through Its Director Shri Rakesh Agrawal, Aged About 45 Years, Having Its Registered Office At C-2/201, Aishwarya Chambers, G.E. Road, Telibandha Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Union of India Through Its Secretary, Ministry of Finance, (Department of Revenue) No. 137, North Block New Delhi. (110001).
2. National Faceless Assessment Centre Delhi Through Additional/joint/ Deputy/Assistant Commissioner of Income Tax/Income Tax Officer, Income Tax Department, North Block New Delhi, 110001.
3. National E-Assessment Centre, Delhi Through Additional/joint/ Deputy/Assistant Commissioner of Income Tax/income Tax Officer, Income Tax Department, North Block New Delh, 110001.

--- Respondent

For Petitioner	:	Mr. Apurv Goyal, Advocate.
For Respondent No.1	:	None.
For Respondent No.2 & 3	:	Mr. Ajay Kumrani, Advocate on behalf of Ms. Naushina Ali, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

21/10/2021

Heard.

1. Petitioner has filed this writ petition under Article 226 of the Constitution of India challenging the assessment order dated 16.06.21 (Annexure P/1) and demand notice dated 16.06.21 (Annexure P/2) issued under Section 156 of the Income Tax Act, 1961.

2. Learned counsel for the petitioner submits that pursuant to notice for re-assessment as per draft assessment order dated 23.05.21 (Annexure P-3), petitioner has submitted his reply and also made a mention that petitioner may be provided personal hearing so as to make his oral submissions vide request dated 28.05.21 & 31.05.21. The request of personal hearing was made by the petitioner in pursuance of Clause 3(c) of Draft Assessment Order, which was in terms of provisions of Section 144(B)(7)(Vii). He submits that even after mentioning the rights of

assessee in accordance with the provisions of Section 144(B) of giving personal hearing, overlooked the prayer made by petitioner to provide personal hearing and the impugned assessment order has been passed. Referring to Section 144(B)(9), it is argued that if assessment is not made in accordance with procedure laid down under Section 144(B) then the same shall be non-est in eyes of law. He also submits that Delhi High Court considering the mandatory provisions under Section 144(B) of providing personal hearing has quashed the assessment order and remitted back the case to the Authority for consideration in accordance with provisions contained in Section 144(B) of the Act of 1961. However, he fairly submits that immediately after issuance of demand notice based on assessment order dated 16.06.21, statutory appeal as provided under Section 246(A) is filed before the Appellate Authority which is pending consideration.

3. Learned counsel for respondent No.2 & 3 submits that once petitioner has approached the Appellate Authority invoking provisions under Section 246(A) of the Act of 1961 by filing a statutory appeal, petitioner could not be permitted to file writ petition during pendency of said statutory appeal. Two parallel proceedings challenging one and same order and proceedings is not permissible under the law. He further submits that grounds raised by petitioner in writ petition can very well be considered by the Appellate Authority also. Hence, writ petition is not maintainable.

4. Heard learned counsel for the parties.

5. It is not in dispute that petitioner after passing of assessment order 16.06.21 (Annexure P-1) and issuance of demand notice dated 16.06.21 (Annexure P-2), petitioner has approached the Appellate Authority by way

of filing an appeal under Section 246(A) of the Act. It is also not in dispute that the Appellate Authority has powers to set aside the assessment order if found to be contrary to mandatory provisions under the Act. Under Section 251 of the Act of 1961, the Appellate Authority is having all the powers to consider the grounds raised by the petitioner in appeal.

6. Issue with regard to filing of two proceedings challenging one order or proceeding has been considered by Hon'ble Supreme Court in case of **Satya Pal Anand versus State of Madhya Pradesh** reported in **(2016) 10 SCC 767** and has held thus :-

> “25. It is a well-established position that the remedy of writ under Article 226 of the Constitution of India is extraordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to. This view of the High Court has found favour with Dipak Misra, J. We respectfully agree with that view.”

7. In view of aforementioned facts, provisions under Section 251 of the Act of 1961, grounds raised by petitioner and also considering aforementioned ruling of Hon'ble Supreme Court, the writ petition challenging the same order which is pending consideration before the

Appellate Authority is not maintainable and is liable to be dismissed, as such.

8. Consequently, writ petition is dismissed as not maintainable.
9. At this stage, learned counsel for petitioner submits that petitioner has filed appeal on 13.08.21, but till date there was no satisfactory progress in the appeal. Hence, a direction may be issued to the Appellate Authority to consider and decide appeal at the earliest.
10. Considering the facts of the case, submissions made by learned counsel for petitioner and date of filing of appeal, Appellate Authority concerned is directed to consider and decide the appeal filed by petitioner expeditiously.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-