IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20994 of 2022

Debabrata Sahu	....	***Petitioner***

Mr. R.P. Kar, Advocate

-versus-

Principal Commissioner of Income Tax, Bhubaneswar & Others	....	***Opposite Parties***

Mr. Tushar Kanti Satapathy, Sr. Standing Counsel for IT Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

<u>ORDER</u>
17.11.2022

<u>Order No.</u>

01. 1. The Petitioner earlier approached this Court with W.P.(C) No. 11366 of 2022, in which a challenge was raised to a notice dated 31st March, 2021 under Section 148 of Income Tax Act, 1961 for the Assessment Year (AY) 2017-18 as well as to the consequential Assessment Order dated 29th March, 2022.

2. While the said writ petition was pending, the Department issued a notice dated 1st June, 2022 under the amended provision Section 148A(b) of the Act,1961 (for short "the Act").

3. In view of this development, the Petitioner withdrew W.P.(C) No.11366 of 2022 in this Court in the expectation that the notice

under Section 148A(b) of the Act would be taken to its logical end. On that basis, the Petitioner filed his objections to the said notice on 11th June, 2022. However, pursuant to the said objections, an order has been passed on 27th July, 2022 under Section 148A(d) of the Act by the Income Tax Officer (ITO), Ward 5(1), Bhubaneswar dropping the proceedings on the ground that pursuant to the notice dated 31st March, 2021 under Section 148 of the Act, the reassessment should be completed by the order dated 29th March, 2022 of the National Faceless Assessment Centre (NFAC).

4. The grievance of the Petitioner as voiced by Mr. R.P. Kar, counsel appearing on his behalf is that the Petitioner was deprived of the opportunity to pursue the earlier writ petition challenging the notice dated 31st March, 2021 under Section 148 of the said Act as well as the consequential Assessment Order dated 29th March, 2022 under Section 147 read with Sections 144 and 144B of the Act.

5. The Court notes that the Petitioner would still be able to challenge the Assessment Order dated 29th March, 2022 by way of a statutory appeal and no prejudice would be caused if it is clarified that it will be open to the Petitioner to urge all the grounds urged earlier in W.P.(C) No.11366 of 2022 before the Appellate Authority. It requires to be noted here that in the order dated 27th July, 2022 passed by the ITO dropping the proceedings under Section 148A(d) of the Act, it was noted that the earlier notice under Section 148 of the IT Act was "digitally signed on 31.03.2021 and mail sent time

was 1.04.2021 at 3.58:48 A.M. and delivered time was 1.04.2021 at 3:58:51 AM" " .

6. It is accordingly clarified that it will be open to the Petitioner to assail the assessment order dated 29th March, 2022 by the NFAC in accordance with law and in that appeal, raise all the grounds that were raised by the Petitioner in W.P.(C) No.11366 of 2022 in accordance with law. This would obviously include a challenge to the validity of the notice dated 31st March, 2021 issued under Section 148 of the Act. If the said appeal is filed not later than 19th December, 2022 accompanied by an application for condonation of delay explaining the delay on account of the above proceedings as well as the present petition, it would be considered on its merit by the Appellate Authority.

7. The writ petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

MRS/Laxmikant