WPA 1876 OF 2023

06.02.2023
Sl no. 2
Ct no. 2
P.M.

Raj Kumar Goenka.
- Vs -
Assessment Unit, Income Tax Department & Ors.

Mr. Abhrotosh Mazumder, Sr. Adv.
Mr. Avra Mazumder,
Mr. Ramesh Kumar Patodia,
Ms, Megha Agawal,
Mr. Suman Bhowmick
… for the petitioner

Mr. Om Narayan Rai
… for Union of India.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has challenged the impugned assessment order under Section 143(3) read with Section 144B of the Income Tax Act, 1961 on the ground that the impugned order is a non-speaking order in the sense that it has not dealt or discussed the contention raised by the assessee petitioner in its objection and the impugned order is simply a copy-paste of the show-cause notice.

On perusal of the impugned order I find that the allegation of the petitioner about passing a non-speaking order to some extent it is substantially correct. However, since the impugned order has been passed after giving an opportunity of hearing to the petitioner and the same is not without jurisdiction and is an appellable order under the statute, I am of the view that appropriate remedy for the petitioner is to file the appeal against the same before the appellate authority concerned.

Learned advocate appearing for the petitioner is ready and willing to avail the alternative remedy by way of a statutory appeal but prays for some interim protection against the demand in question arising out of the impugned assessment order.

Mr. Mazumder, learned senior advocate was asked to take instruction from the petitioner as to whether petitioner is ready and willing to pay 10% of the demand in question for interim protection during the pendency of the appeal to be filed by the petitioner, to which Mr. Mazumder on instruction submits that petitioner is ready and willing to pay 10% of the demand.

Considering the submission of Mr. Mazumder, learned senior advocate representing the petitioner and Mr. Rai, learned advocate representing the respondent Income Tax authority concerned I am inclined to dispose of the writ petition on the following terms and conditions : -

i) Petitioner is granted liberty to file appeal within a fortnight from date against the impugned assessment order.

ii) Petitioner will make payment of 10% of the demand arising out of the impugned assessment order in question within two weeks from date.

iii) If petitioner files the appeal and makes payment of 10% of the impugned demand within the period stipulated herein and produces the same before the Assessing Officer concerned, in that event the Assessing Officer concerned shall not take any coercive action against the petitioner till the disposal of the appeal to be filed by the petitioner before the appellate authority concerned.

iv) The appellate authority concerned is requested to dispose of the appeal to be filed by the petitioner pursuant to this direction of this Court, in that event the appellate authority concerned shall consider and dispose of the appeal on merit without being influenced by any observation made in this order, within a period of four months from the date of filing such appeal.

v) In case of non-compliance of any of the direction in this order in any manner, this order will lose its force and the respondent authority will be free to proceed in accordance with law against the petitioner.

vi) For a period of two weeks the Assessing officer concerned shall not take any coercive action against the petitioner for recovery of the demand in question.

With this observation and direction this writ petition being WPA 1876 of 2023 is disposed of.

(Md. Nizamuddin, J.)