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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

WPA 951 of 2023

Ashok Bhansali
versus
Union of India & Ors.

Mr. Navin Barik,
Mr. Sujit Basu,
Ms. Esha Acharya
…for the Petitioner.

Mr. Sudipto Kumar Mazumdar,
Mr. Ajay Kumar Singhania
….for Income Tax.

Admittedly, the order under challenge in this writ petition is one under the provision of Section 147 of the Income Tax Act, 1961 (hereinafter referred to as the said Act). Any order passed under this provision is appealable in view of the provision under Section 246 of the said Act. In ordinary course, the petition is required to be dismissed by holding the same to be premature as the petitioner has not availed the statutory remedy of appeal available under the provision of the said Act.

However, the petitioner says that he is entitled to maintain this writ petition as the challenge is to the decision making process and not to the assessment order per se. The petitioner says that he has been denied the opportunity to file a reply to the show cause and as such, there is a violation of principles of natural justice which permits the petitioner to file and maintain this writ petition. The petitioner says that the matter be reheard by the Adjudicating Officer after granting the petitioner a shot time to file reply to the show cause.

On behalf of the Revenue, it is submitted that the writ petition is not maintainable in view of the judgment reported in **2022 SCC Online SC 1425** (**State of Madhya Pradesh and Another Vs. Commercial Engineers and Body Building Company Limited**). It is also submitted on behalf of the Revenue that the petitioner was given sufficient opportunity to address to the show cause, but has not availed the same. As a consequence whereof, the Adjudicating Officer proceeded with the matter. The petition should be, according to the revenue, relegated to appeal as the petitioner can take the issue of being denied an opportunity to sow cause before the appellate authority.

After hearing the parties and considering the materials on record, I find from the order, the decision making process which is said to be challenged by the petitioner in this writ petition, stage-wise opportunity had been granted to the petitioner to represent his case, but the petitioner alleges that no reply to the show cause notice dated 3rd March, 2023 was given. The order dated 24th March, 2023, however, in paragraph 6 records that keeping in view the principles of natural justice another show cause notice dated 3rd March, 2023 was awarded to the assessee. It is, therefor, difficult to accept the contention of the petitioner at this stage after perusing the order dated 24th March, 2023.

Keeping in mind that the order is appealable, the writ petition is disposed of by granting the petitioner liberty to assail the order dated 24th March, 2023 on all point made out in the writ petition including the point of violation of natural justice and denial of an opportunity to file reply to the show cause notice dated 3rd March, 2023.

The writ petition has been filed on 5th April, 2023 and as such the time spent between 5th April, 2023 and 4th May, 2023 shall be counted as of the petitioner having proceeded bona fide in a Court without jurisdiction for the purpose of computing limitation to prefer the appeal.

Since no affidavits have been called for, allegations contained in the writ petition are deemed not to have been admitted.

I also make it clear that while deciding this writ petition, I have not gone into the merits of order under challenge and the Appellate Authority, if any appeal is preferred shall be free to decide on all issues which are kept open for adjudication.

All parties, including the respondent no.3, shall act on a server copy of this order duly downloaded from the official website of this Court without insisting upon production of certified copy thereof.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of usual formalities.

(Arindam Mukherjee, J.)