OD - 4

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

APO/107/2023
IA NO.GA/1/2023
SRI RAMAKRISHNA MUKHUTY AND ORS.
-Versus-
NATIONAL FACELESS ASSESSMENT CENTRE AND ORS.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th October, 2023

Appearance :
Mr.Abhratosh Majumdar, Sr. Adv.
Mr. Avra Mazumder, Adv.
Mr. Samrat Das, Adv.
Mr. Kausheyo Roy, Adv.
...for the appellant.

Mr. Amit Sharma, Adv.
...for the respondent.

The Court : This intra-Court appeal by the writ petitioners is directed against the order dated 6th July, 2023 in WPO No.1218 of 2023. The appellants have challenged the assessment order dated 21st March, 2023 passed under Section 147 read with Section 144/144B of the Income Tax Act, 1961 (the Act). The writ petition was dismissed by the learned Single Judge on the ground that the assessee has to file a statutory appeal.

Aggrieved by the said order, the appellants have filed the present appeal.

The issue is as to under which circumstances writ of certiorari can be issued despite existence of an alternate remedy is no longer *res integra*. It is beneficial to refer to the decision of the Hon'ble Supreme Court in *Arun Kumar & Ors. Vs. Union of India & Ors.,* reported at *(2007) 1 SCC 732*. The Hon'ble Supreme Court pointed out that the existence of jurisdictional fact is *sine qua non* for the exercise of the power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter of existence on jurisdictional fact, it can decide the fact in issue or adjudicatory fact. A wrong decision on fact in issue or on adjudicatory fact would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present. It is further pointed out that a jurisdictional fact is a fact which was existed before the the court or a tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is already in existence or non-existence of which depends jurisdiction of fact of a court or a tribunal or an authority. It is the fact upon which audit agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The jurisdictional fact or the jurisdictional error which is being pointed out by the appellant is that the assessing officer acted in excess of his jurisdiction in assuming that the rest of compensation under the provisions of the National Highway Act was taxable in the income of the assessee trust. The assessee while replying to the show cause notice has specifically pointed out that the compensation under the National Highway Act, 1956 cannot be legally taxed in the assessee trust as income and it is also a matter of record that the assessee trust did not own any land. The assessee's case was that the compensation was inadvertently paid in the name of the trust though the owners of the land where the individual trustees and the trust has paid the individual trustees by way of cheque in the share of the compensation to each of the trustees who are the owners of the land. Further, reliance was placed on the Circular issued by the CBDT in Circular No.36 of 2016 which clarifies that the compensation received under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall not be feasible under the provisions of the said Act of 1961 even though there is no specific provision of exemption of such compensation in the said Act of 1961. Though such a specific plea was raised by the assessee in their objection while completing the assessment, the assessing officer does not rebut or dispute the said position but curiously enough has made an observation that the CBDT Circular dated 25th October, 2016 does not resolve the issue and serve the purpose of the position. It is to be seen that the finding and/or observation recorded by the assessing officer has been supported by law.

The learned Counsel for the appellant placed reliance on the decision of this Court in the case of Principal Commissioner of Income Tax -vs- Durgapur Projects Limited ; 2023 454 ITR 367 (CAL), wherein it has been held that the compensation received under the said Act was not taxable in the hands of the assessee.

The next aspect which has been specified had been pointed out by the assessee is that the assessing officer travelled beyond the allegation in the show cause notice. Thus, considering the facts and circumstances of the case, we are of the view that the jurisdiction of the assessing officer to invoke his powers has to be decided in the writ petition and for which purpose affidavit is required to be filed by the department to satisfy the Court that it had jurisdiction to tax the compensation in the hands of the appellant trust.

Therefore, we are of the view that the writ petition is to be heard and to be decided on merits.

In the result, the appeal is allowed. The order passed in the writ petition is set aside and the writ petition is restored to file of the learned Single Bench. Respondents department are directed to file their affidavit-in-opposition within six weeks from date; reply, if any, within three weeks thereafter.

The writ petition is directed to be listed before the appropriate Bench after nine weeks till the matter is heard and disposed of by the learned Single Bench. The impugned order dated 21st March, 2023 and all other proceedings pursuant to the same shall remain stayed.

The connected application for stay [GA/1/2023] stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/GH/PKD.