HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION NO.35044 OF 2023

Between:

Rajeswari Mopur, W/o. Mopur Venkata Tami Reddy Aged about 48 years, R/o.11-14-393, Flat No.101 Sai Surya Marvel Apartments, Siri Nagar, L. B. Nagar, Hyderabad - 500074

...PETITIONER

AND

1. Assessment Unit, Income Tax Department, National Faceless Assessment Centre Government of India, Jawaharlal Nehru Marg, Block B, Press Enclave, Savitri Nagar, New Delhi 110002
2. Income Tax Officer, Ward-6(1), Hyderabad Income Tax Tower A.C.Guards, Masab tank, Hyderabad - 500004
3. Union of India, Rep. by its Secretary, Department of Revenue, Ministry of Finance, North Block New Delhi- 110001

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ Order or Direction more particularly in the nature of Writ of Certiorari quashing the impugned Assessment Order having DIN No.ITBA/AST/S/147/2023-24/1058842546(1) dated 18-12-2023 issued by respondent for A.Y.2016-17 pursuant to the impugned order dated 16-03-2023 passed u/s 148A (d) and impugned notice dated 24-03-2023 u/s 148 passed by

2nd respondent as being arbitrary, illegal, unjust, without jurisdiction and violative of Articles 14, 19 (1) g and 265 of Constitution of India.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the disputed demand of tax, interest and penalty and all further proceedings initiated pursuant to impugned Assessment Order having DIN No.ITBA/AST/S/147/2023-24/1058842546(1) dated 18-12-2023 issued by 1st respondent for A.Y.2016-17.

Counsel for the Petitioner: Mr. MOHD. MUKHAIRUDDIN

Counsel for the Respondent Nos.1 & 2: SRI J. V. PRASAD,
S.C. FOR INCOME TAX

Counsel for the Respondent No.3: SRI GADI PRAVEEN KUMAR,
DEPUTY SOLICITOR GENERAL OF INDIA

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION No.35044 of 2023

ORDER:*(per Hon'ble Sri Justice **P.SAM KOSHY**)*

Today, when the matter is taken up for hearing, it has been informed by the parties that an identical writ petition i.e., W.P.No.30153 of 2023 has already been allowed and disposed of *vide* order dated 30.10.2023.

2. In view of the fact that the identical matter has already been allowed by this Court, this Writ Petition also stands allowed in terms of the order passed in W.P.No.30153 of 2023 decided on 30.10.2023.

As a sequel, miscellaneous applications pending, if any, in this writ petition, shall stand closed. No order as to costs.

SD/- N. CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Assessment Unit, Income Tax Department, National Faceless Assessment Centre Government of India, Jawaharlal Nehru Marg, Block B, Press Enclave, Savitri Nagar, New Delhi 110002
2. The Income Tax Officer, Ward-6(1), Hyderabad Income Tax Tower A.C.Guards, Masab tank, Hyderabad - 500004
3. The Secretary, Department of Revenue, Ministry of Finance, Union of India, North Block, New Delhi- 110001
4. One CC to Mr. MOHD. MUKHAIRUDDIN, Advocate [OPUC]
5. One CC to SRI J. V. PRASAD, S.C. for INCOME TAX [OPUC]
6. One CC to SRI GADI PRAVEEN KUMAR, Deputy Solicitor General of India [OPUC]

7. Two CD Copies

   Along with a copy of the order dated 30.10.2023 in W.P.No.30153 of 2023.

MP
GJP

HIGH COURT

DATED:29/12/2023

ORDER

WP.No.35044 of 2023

ALLOWING THE WRIT PETITION
WITHOUT COSTS

10
7/2/24

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

W.P. No. 30153 of 2023

ORDER: *(per Hon'ble Sri Justice **P.SAM KOSHY**)*

Heard Mr. A.V.A. Siva Kartikeya, learned counsel for the petitioner and Ms. B. Sapna Reddy, learned Junior Standing Counsel for Income Tax appearing for the respondents. Perused the entire record.

2. The instant petition has been filed challenging the Assessment Order passed by respondent No.1 under section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 25.04.2022 for the Assessment Year 2018-19.

3. One of the contentions that the petitioner has raised in the present writ petition is that under the amended provisions of the Act which came into effect from 01.04.2021, the respondents while proceeding under Section 148 of the Act were required to issue notice under Section 148A and provide an opportunity of hearing to the assessee. As per the amended provision of law, the proceedings to be drawn are also in a faceless manner. Whereas, it has been contended by the petitioner that in the instant case, reopening has been initiated by the Juridictional Assessing Officer. In respect of the said objection that the petitioner had raised, he relied upon the recent batch of writ

petitions decided by this very Bench on 14.09.2023 vide W.P.No.25903 of 2022 and batch to the limited extent.

4. Learned counsel for the Department would not dispute of having decided the said objection in the aforesaid batch matters. However, learned counsel submits that apart from the aforesaid objection, there have been other various objections also which the petitioner has raised in the writ petition.

5. So far as this contention of the learned counsel for the Department is concerned, this Bench, while disposing of W.P.No.25903 of 2022 and batch had taken note of the same in paragraph Nos.37 & 38 which is reproduced herein under:

> "37. The preliminary objection raised by the petitioner is sustained and all these writ petitions stands allowed on this very jurisdictional issue. Since the impugned notices and orders are getting quashed on the point of jurisdiction, we are not inclined to proceed further and decide the other issues raised by the petitioner which stands reserved to be raised and contended in an appropriate proceedings."
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> 38. Since the Hon'ble Supreme Court had, in the case of Ashish Agarwal, supra, as a one-time measure exercising the powers under Article 142 of the Constitution of India, permitted the Revenue to proceed under the substituted provisions, and this Court allowing the petitions only on the procedural flaw, the right conferred on the Revenue would remain reserved to proceed further if they so want from the stage of the order of the Supreme Court in the case of Ashish Agarwal, supra.

6. In view of the same, we are inclined to allow the present writ petition also on similar terms. Accordingly, the present Writ Petition stands allowed on the objection of the petitioner that the proceedings have not been drawn in accordance with the amended provision but under the unamended provision which is otherwise not sustainable.

As has been held by this Bench in the aforesaid batch matters, the right of the respondents would stand reserved as is envisaged in paragraph Nos.37 & 38 of the said batch. No order as to costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand closed.

P.SAM KOSHY, J

LAXMI NARAYANA ALISHETTY, J

Dated: 30.10.2023
aqs