

2024:PHHC:098158-DB



CWP-26952-2023 (O&M)
Date of Decision: 30.07.2024

SIKA India Pvt. Ltd.

...Petitioner

Vs.

Assistant Commissioner of Income Tax and others

...Respondents

CORAM: HON’BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON’BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. Umang Goyal, Advocate for the petitioner.

Mr. Varun Issar, Sr. Standing Counsel for the respondents.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Learned counsel for both the sides are *ad idem* that the issue raised in this writ petition stands finally adjudicated by this Court vide order dated 29.07.2024 passed in a bunch of writ petitions in which the lead case is **CWP-21509-2023** titled as **Jasjit Singh** Vs. **Union of India and Others,** wherein this Court has held the notice issued by the Jurisdictional Assessing Officer as unjustified.

2. The Court has passed the following order:-

“14 xxx xxx xxx xxx

15 xxx xxx xxx xxxx

16. We are in agreement with the view taken by the Coordinate Bench and hold that such circular or instructions by the Board could not have been issued to override statutory provisions or to make them otiose or obsolete. Legislative enactments having financial implications are required to be followed strictly and mandatorily. By exercising the powers contained in Sections 119 and 120 of the Act, 1961 as well as

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Section 144B (7 & 8), the authorities cannot be allowed to usurp the legal provisions to their own satisfaction and convenience causing hardship to the assesseees. It also leaves confusion in the minds of the taxpayers. In the opinion of this Court, instructions and circulars can be issued only for the purpose of supplementing the statutory provisions and for their implementation.

17. In view of the aforesaid discussion, there is no occasion to distinguish or take a different view as suggested by the learned counsel for the revenue from what has already been held by the Coordinate Bench.

18. Keeping in view the law laid down by the Coordinate Bench (supra), notices issued by the JAO under Section 148 of the Act, 1961 and the proceedings initiated thereafter without conducting the faceless assessment as envisaged under Section 144B of the Act, 1961, have been found to be contrary to the provisions of the Act, 1961 and accordingly notices dated 28.02.2023, 16.03.2023, 20.03.2024 and 30.03.2023 and order dated 30.03.2023, are set aside for want of jurisdiction.

19. The respondents-revenue would be, however, at liberty to follow the procedure as laid down under the Act, 1961 and proceed accordingly, if so advised.

20. All the writ petitions are allowed. The interim order passed by the Court shall stand merged with the present order.

21. xxx xxx xxxx

22. xxx xxx xxxx”

3. In view of the above, we allow the writ petition in the aforesaid terms and set aside the impugned notice/order dated 08.02.2023, 27.03.2023

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and 31.03.2023. The observations and order passed above shall apply *mutatis mutandis* to the present case.

4. The respondents-revenue would be, however, at liberty to follow the procedure as laid down under the Act, 1961 and proceed accordingly, if so advised.
5. Pending applications, if any, shall stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

30.07.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No