(2012) 01 AHC CK 0492

In the Allahabad High Court

Case No : Service Bench No. - 62 of 2012

Dinesh Chandra Agarwal APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Advocates Act, 1961 — Section 30
Income Tax Act, 1961 — Section 253, 254, 288
Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 — Rule 13E

Citation : (2012) 206 TAXMAN 29

Hon'ble Judges : Uma Nath Singh, J;Satish Chandra, J

Bench : Division Bench

Judgement

1. This writ petition has been filed to seek the following reliefs :

i)Issue a writ order or direction in the nature of Certiorari quashing the "The income tax Appellate Tribunal Members (Recruitment and Conditions of Service) Amendment Rules, 2009" (published in official gazette on 05.06.2009) (Annexure No. 1 to the writ petition) being ultra vires to the provisions of Section 288 of the Income Tax Act 1961, as well as to the provisions of Section 30 of Advocates Act 1961, to the extent of its extended application by virtue of a judicial pronouncement by ITAT in the matter of Concept Creations.

ii) Issue a further writ order or direction of appropriate nature holding impugned judgment and order dated 28.12.2011 passed by the Respondent No.3 in I.T.A. No. 368/LKW/2011 (Assessment Year 2006-07) inre: Ajanta Hospital and IVF Center Pvt. Ltd., Lucknow Versus ACIT Range IV Lucknow as nullity to the extent so far as it debars the petitioner from appearing and practicing as an Advocate before ITAT.

iii) Issue a writ order or direction of appropriate nature holding that the petitioner is eligible to appear and practice before the respondent no.3 as well as the other benches of Income Tax Appellate Tribunal situated in the country.

iv) Issue any other writ order or direction, which this Hon''ble Court may deem fit and consider proper under the circumstances of the case.

v) Award the cost of the instant petition to the petitioner.

2. As per Rule 13E of the Rules notified on June 3, 2009 whereby the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 has been amended, a ban has been imposed on practice by the retired members before the Income Tax Appellate Tribunal Rule 13E as aforesaid on reproduction reads as :

13E. The President, the Senior Vice-President, the Vice-President and the Members of the Tribunal shall not practice before the tribunal after retirement from the service of the Tribunal.

3. Though, prima facie, the Rule appears to be a correct notification supposedly issued in public interest in line with the rules and practice clamping ban on the legal practice by the retired judges of High Court in the courts where they remain posted as permanent judge and the Tribunals and Courts subordinate to High Court, however, it appears to be offensive in two respects; namely, that the retired members have been completely barred from practice before the Tribunal, and secondly, that the aforesaid rule 13E has been interpreted to apply retrospectively in the judgment rendered in the case of Concept Creations Vs. Additional Commissioner of Income Tax, Range, Panipat reported in (2009) 120 ITD 19 (Delhi) (Special Bench) by the Income Tax Appellate Tribunal, Delhi, beyond its pale of competence as it has the jurisdiction to decide only the matters relating to tax appeals as contained in the Income Tax Act vide Sections 253 and 254 thereof.

4. Hence, issue notice to opposite party no.3 to show cause as to under what jurisdiction and authority, the Tribunal has interpreted Rule 13E as aforesaid in the judgment passed in the case of Concept Creations(supra) to the disadvantage of the retired members by imposing a complete ban on the practice before the Tribunal.

5. The petitioner may serve this notice dasti as well.

6. Till the next date of hearing, operation of the impugned rule 13E as well as the judgment in the case of Concept Creations shall remain stayed in so far as they impose a complete ban on the practice by retired members before the Tribunal.

7. Thus, it would be open for the retired members to practise before the Benches of Tribunal where they had not remained posted and held courts temporarily or on regular basis.

8. As the vires of the rules as aforesaid, have also been called in question, therefore, we issue notice to the learned Attorney General for India to submit his response.

9. List on 06.02.2012. The matter shall remain part heard.