(2023) 05 OHC CK 0167

In the Orissa High Court

Case No : Writ Petition (C) No. 13363 Of 2023

M/s. B.S.J. Associates — APPELLANT

Vs

Assessment Unit Of National Faceless Assessment Centre, New Delhi And Others — RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:
Income Tax Act, 1961 — Section 148A(b), 148A(d)

Citation : (2023) 05 OHC CK 0167

Hon'ble Judges : S. Talapatra, J;Savitri Ratho, J

Bench : Division Bench

Advocate : S. Ray, K.K. Sahoo, S.S. Mohapatra

Final Decision : Disposed Of

Judgement

1. This matter is taken up through hybrid mode.

2. Heard Mr. S. Ray, learned Senior Counsel assisted by Mr. K.K. Sahoo, learned counsel appearing for the Petitioner.

3. By means of this writ petition, the notice dated 07.03.2022 under Section 148A(b) of the Income Tax Act, 1961, Annexure-1 to the writ petition has been challenged.

4. Mr. Ray, learned Senior Counsel has submitted that even the Assessing Officer has not come to a definite inference. For this purpose, he has referred to the order dated 30.03.2022 as passed under clause (d) of Section 148A of the Income Tax Act, 1961. In Paragraph-6.1 of the said order, the following observation has been made by the Assessing Officer:

"I have perused the written submission filed by the assessee as well as the documents enclosed therein. Though the assessee has tried to establish the genuineness of transaction made with M S Steel, Hari Steel and Mayom Steels Limited to a certain extent, it will be too early to adjudge the said transaction as genuine one at this stage. The assessee in his written submission has acknowledged transactions made with M S Steel, Hari Steel and Mayom Steels Limited during the F.Y 2017-18. However, the assessee's bland statements are not supported with relevant documentary evidences. No tax invoice, transportation challans, purchase register, sales register, stock register, bills/ vouchers etc. have been furnished to cross verify the veracity of the claim of the assessee that the alleged transactions are genuine. The assessee has not furnished any document confirming the sale of goods by the supplier i.e. M S Steel, Hari Steel and Mayom Steels Limited to him."

According to Mr. Ray, learned Senior Counsel, from the very observation, it is crystal clear that there was no material to draw an inference that there had been escaped assessment.

5. Issue notice, returnable on 10th July, 2023.

6. Since Mr. S.S. Mohapatra, learned Senior Standing Counsel, Income Tax appears and waives notice for the revenue, no formal notice is called for.

7. We direct the Opposite Parties to file their counter affidavit by the next date.

I.A. No. 6184 of 2023

1. Heard Mr. S. Ray, learned Senior Counsel assisted by Mr. K.K. Sahoo, learned counsel appearing for the applicant and also heard Mr. S.S. Mohapatra, learned Senior Standing Counsel, Income Tax appearing for the Opposite Parties.

2. This is an application for staying the further proceeding in terms of the notice dated 07.03.2022 under Section 148A(b) of the Income Tax Act.

3. Mr. Ray, learned Senior Counsel has emphatically submitted that the Assessing Officer has failed to come to an inference on verification that there had been any escaped assessment and as such, the proceeding as contemplated is entirely bad in law.

4. We have assessed prima facie the materials placed with the writ petition and heard the counsel for the parties. In our considered view, the prima facie case has been made out by the applicant for passing an order for interim protection. Accordingly, we stay the further proceeding, in terms of the notice dated 07.03.2022 as issued under clause (b) of Section 148A of the Income Tax Act, 1961, Annexure-1 to the writ petition, till the disposal of the writ petition.

5. In terms thereof, this application stands allowed and disposed of.

6. Urgent certified copy of this order be granted as per rules.

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