(2013) 05 SHI CK 0111

In the High Court Of Himachal Pradesh

Case No : CWP No. 2517 of 2013-B

Sai Ram Education Trust APPELLANT

Vs

Asstt. CIT RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Citation : (2013) 05 SHI CK 0111

Hon'ble Judges : A.M. Khanwilkar, C.J;R.B. Misra, J

Bench : Division Bench

Judgement

1. Heard counsel for the parties. Rule made returnable forthwith.

2. As short question is involved, this petition is taken up for final disposal forthwith, by consent. Counsel for the respondents waives notice for final disposal.

3. This petition under Article 226 of the Constitution of India, takes exception to the communication dated 18.4.2013, issued under the signatures of Commissioner Income Tax, Shimla (Annexure P-10), calling upon the petitioner to deposit Rs. 5,00,000 immediately, so that the balance demand will be reviewed in the month of October, 2013, in the context of the assessment order dated 5.2.2013. The grievance of the petitioner is that the direction to pay Rs. 5,00,000, issued by the Commissioner Income Tax, purportedly, in exercise of the powers u/s 220(6) read with Section 120 of the Income Tax Act, is on the face of it perverse because it is founded on the conclusion recorded in the assessment order that the petitioner was claiming exemption u/s 12A of the Income Tax Act of Rs. 1,87,63, 548. However, from the statement at page-40, the income and expenditure, it is noticed that the said amount was incurred towards indirect expenses by the petitioner during the relevant period i.e. 1-4-2009 to 31-3-2010. Assuming that the exemption claimed by the petitioner u/s 12A, has been rightly denied to the petitioner by the assessing officer, that would not permit the Assessing Officer to assume that the entire amount of Rs. 1,87,63,548, which was expenditure incurred by the petitioner, was amenable to

tax. The whole expenditure could not been disallowed or treated as taxable income, as such. Notably, the assessment order has not analyzed this aspect of the matter at all. It is on the basis of that erroneous assumption, the Commissioner Income Tax deemed it appropriate to invoke powers u/s 220(6) read with section 120 of the Income Tax Act and issued impugned communication, calling upon the petitioner to deposit Rs. 5,00,000, as in his opinion, the petitioner was liable to pay income tax to the extent of Rs. 79,43,170 on the said amount of Rs. 1,87,63,548.

4. In other words, the basis on which, the Commissioner Income Tax issued the demand notice to the petitioner being untenable, the direction so issued cannot stand to reason and will have to be set aside, being perverse. The fact that the petitioner has resorted to rectification and/or appeal proceedings against the decision of the assessing officer, does not mean that the petitioner should be forced to pay amount of Rs. 5,00,000, as condition precedent on the assumption that the petitioner was liable to pay tax to the extent of Rs. 79, 43,170, which as aforesaid, is completely misplaced and which view suffers from non application of mind.

5. Accordingly, the impugned communication (Annexure P-10) is quashed and set aside. However, we make it clear that this order is not an expression of opinion either way on the merits of the controversy, required to be answered in rectification or appeal proceedings. That will have to be decided in accordance with law. All questions, in that behalf, are left open. Petition stands disposed of.

