HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE ELEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION NO: 1219 OF 2023

Between:

K. Yadagiri, S/o. Late. K. Gowraiah,

...Petitioner

AND

1. Ministry of Finance, National Faceless Assessment Center Represented by Its Principal Chief Commission of Income Tax Department Room No 356 C.R. BUILDING, IP Estate, New Delhi, Delhi 110002.
2. Deputy Commissioner of Income Tax Regional Faceless Assessment Center, Income Tax Department, Central circle-1(4) Ayakar Bhavan, Opposite to L.B.Stadium, Basheer bagh, Hyderabad.
3. Assessment Officer, Regional Faceless Assessment Center, Income Tax Department, Central circle-1(4) Ayakar Bhavan, Opposite to L.B.Stadium, Basheer bagh, Hyderabad.

...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 an appropriate writ, order or dire particularly one in the nature of WRIT OF MANDAMUS declaring the action of the respondents null and void and contrary to the provision of the Income Tax Act for not following the due procedure of law prescribed under the Income Tax Act 1961 under section 144 B and consequently quash, or set - aside the final assessment order dated 28.12.2022 and demand notice issued under section 156 of Income Tax and show cause notices issued under section 274 R/W 270 A, Notice U/S 274 R/w Section 271AAC(1) of Income Tax Act.

<u>IA NO: 1 OF 2023</u>

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the Writ Petition, the High Court may be pleased to stay of all further proceedings for appeal and subsequently stay the proceedings for the demand notice issued under section 156 for penalty proceedings Issued under sections 274 R/W 270 A, Notice U/S 274 R/w Section 271AAC (1) of Income Tax Act 1961, pending disposal of Writ Petition No.1219 of 2023, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. MANDALA NAGENDRA BABU, Advocate for the Petitioner, GADI PRAVEEN KUMAR (Dy. SOLICITOR GENERAL OF INDIA), for the Respondent No.1, Sri. Ajay Kulkarni, for the Respondents Nos.2 and 3 the Court made the following.

ORDER:

"Heard Mr. M.Nagendra Babu, learned counsel for the petitioner.

By filing this petition under Article 226 of the Constitution of India, petitioner has assailed legality and validity of the assessment order dated 28.12.2022 passed by the 3rd respondent under Section 143(3) of the Income Tax Act, 1961 (briefly referred to hereinafter as 'the Act') read with Section 144B of the said Act for the assessment year 2021-22.

On a query by the Court as to why petitioner has not preferred appeal against the order of assessment, learned counsel for the petitioner has drawn the attention of the Court to the provisions of Section 144B of the Act, more particularly to clauses (xiv), (xv) and (xvi) thereof and submits that neither any draft order of assessment was prepared nor was the same communicated to the petitioner. Procedure contemplated by Section 144B of the Act are mandatory. Non-compliance thereof would render an order of assessment to be invalid. There being a jurisdictional error, he has approached the High Court under Article 226 of the Constitution of India.

Issue notice.

Mr. B.Mukherjee, learned counsel representing Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India waives notice for respondent No.1.

Mr. Ajay Kulkarni, learned counsel representing Mr. B.Narasimha Sarma, learned Standing Counsel, Income Tax Department waives notice for respondent Nos.2 & 3.

In the meanwhile, respondents are directed not to take follow up steps pursuant to the impugned assessment order dated 28.12.2022. If any steps have been taken, the same shall remain stayed.

List on 27.03.2023."

SD/- A.V.S. PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Chief Commission of Income Tax Department, Ministry of Finance, National Faceless Assessment Center Room No 356 C.R. BUILDING, IP Estate, New Delhi, Delhi 110002.

2. Deputy Commissioner of Income Tax Regional Faceless Assessment Center, Income Tax Department, Central circle-1(4) Ayakar Bhavan, Opposite to L.B.Stadium, Basheer bagh, Hyderabad.
3. Assessment Officer, Regional Faceless Assessment Center, Income Tax Department, Central circle-1(4) Ayakar Bhavan, Opposite to L.B.Stadium, Basheer bagh, Hyderabad (RR 1 to 3 by RPAD)
4. One CC to Mr. MANDALA NAGENDRA BABU, Advocate [OPUC].
5. One CC to Sri. GADI PRAVEEN KUMAR, (Dy. SOLICITOR GENERAL OF INDIA), Advocate [OPUC].
6. Two spare copies.

HIGH COURT

UBJ & NTRJ

DATED: 11/01/2023

NOTE: LIST ON 27.03.2023

ORDER

WP.No.1219 of 2023

HIGH COURT FOR THE STATE OF TELANGANA
SPECIAL CELL
12 JAN 2023
★ DESPATCHED ★

STAY