IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.24786 of 2024

M/s. Sri Gopal Store, Sambalpur .... ***Petitioner***

-versus-

Assessing Officer, Assessment Unit National Faceless Assessment Centre, New Delhi and another .... ***Opposite Parties***

Learned advocates appeared in the case:

For petitioner : Mr. S. Ray, Senior Advocate
Mr. K.K. Sahoo, Advocate
Mr. D.K. Samal, Advocate

For opposite parties : Mr. S.C. Mohanty, Advocate
(Senior Standing Counsel)

CORAM:

THE HON'BLE MR. JUSTICE ARINDAM SINHA
AND
THE HON'BLE MR. JUSTICE M.S. SAHOO

Date of hearing and judgment : 22nd October, 2024

ARINDAM SINHA, J.

1. Mr. Ray, learned senior advocate appears on behalf of petitioner and submits, impugned are assessment order dated 31st July, 2024 pertaining to assessment year, 2021-22 and demand

notices issued pursuant thereto. They are liable to be quashed because they were made manually under provisions in section 143(3) of Income Tax Act, 1961 though the assessment was to be done in a faceless manner as per scheme notified on 29th March, 2022. He draws attention to the notification to submit, the assessment ought to have been made as provided in section 151-A. He seeks interference.

2. Mr. Mohanty, learned advocate, Senior Standing Counsel appears on behalf of revenue and submits, the assessment order was made under section 143(3) read with section 260. Petitioner has alternative efficacious statutory remedy of appeal to the first appellate authority. The writ petition is not maintainable.

3. Petitioner seeks interference on strength of notification dated 29th March, 2022. The notification says, it was made in exercise of powers conferred by sub-sections (1) and (2) of section 151-A. The section provides for faceless assessment of income escaping assessment. Accordingly, scope of the scheme, under section 3 thereof is, inter alia, assessment, reassessment or re-computation under section 147. We find from assessment order dated 31st July, 2024, it was made under section 143(3) read with section 260,

pertaining to assessment year, 2021-22. The scheme has no application to the assessment.

4. Mr. Ray submits, he has another point of challenge. It is violation of principles of natural justice. He draws attention to his client's reply dated 19th July, 2023 to the show-cause notice. He demonstrates that a further prayer was made to afford chance to his client to cross-examine. The further prayer is reproduced below.

> *"It is further prayed that before passing any adverse order, if any, utilizing the statement of any Person/ Party/Dealer/Assessee, a chance to cross examine the concerned Person/Party/Dealer/Assessee may kindly be allowed to the assessee or his authorized representative across the table before the jurisdictional ITO, Sambalpur or if possible through Video Conferring. The assessee is ready to pay the cost of transportation and other expenses of the concerned persons to be cross examined."*

No opportunity of cross-examination was given in making of impugned assessment order.

5. On query from Court Mr. Ray refers us to impugned assessment order. He demonstrates, there was reliance on physical verification report in the case of Md. Amir Faijal. No opportunity of

cross-examination was given to his client in acting upon the report. He submits still further with reference to sub-section(1) in section 144-B, it is a non obstante clause applicable, inter alia, in respect of sub-section(3) in section 143. He reiterates, impugned order along with demands made pursuant thereto, be all set aside.

6. Mr. Mohanty reiterates, there be no interference since impugned assessment order was made on restoration of the show-cause notice by our order dated 13th July, 2023 in WP(C) no.18079 of 2023 (petitioner's own case).

7. Section 144-B appears to be a complete code providing for faceless assessment. We have already noted before that impugned assessment order was made under section 143(3) read with section 260. Sub-section(1) in section 144-B(1), without the clauses thereunder is reproduced below.

> *"**144-B. Faceless assessment**.-(1) Notwithstanding anything to the contrary contained in any other provisions of this Act, the assessment under sub-section (3) of section 143 or under section 144, **in the cases referred to in sub-section (2)**, shall be made in a faceless manner as per the following procedure, namely:- ... ..."*
>
> (emphasis supplied)

Sub-section(2) in section 144-B is also reproduced below.

> *"(2) The faceless assessment under sub-section(1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board."*

No specification by the Board has been shown to us.

8. It is clear that the Assessing Officer (AO) found purchases made from suppliers were doubtful. Questions of fact will arise in event petitioner's contentions are to be gone into. As such, even otherwise we are not inclined to interfere.

9. The writ petition is dismissed.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

Prasant