HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D. B. Civil Writ Petition No. 6730/2024

Madhuri Sahai W/o Shri Ram Mohan Sahai, aged about 88 years, R/o SP-15 Bhabha Marg, Tilak Nagar, Jaipur, 302004, Rajasthan.

----Petitioner

Versus

1. Deputy Commissioner of Income Tax, ACIT Central Circle-2, Jaipur, having its Address at Room No. 410, 4th Floor, Jeevan Nidhi-2, LIC Building, Ambedkar Circle, Jaipur, Rajasthan 302005.

2. Income Tax Officer, Ward-7(1), Jaipur, having its Address at Sidhnath Bhawan, Jaipur Rajas, Jyoti Nagar Scheme, Lal Kothi Scheme, Behind New Vidhansabha, Janpath, Jaipur, Rajasthan, 302015.

3. Assistant Commissioner of Income Tax, DCIT/ACIT, Central Circle-2, Jaipur, having its Address at Room No. 410, 4th Floor, Jeevan Nidhi-2, LIC Building, Ambedkar Circle, Jaipur, Rajasthan 302005.

----Respondents

For Petitioner	:	Mr. S.S. Hora Advocate.
For Respondents	:	Mr. Siddharth Bapna Advocate with Mr. Sarvesh Jain Advocate, Ms. Kriti Kalawatia Advocate and Mr. Meyhul Mittal Advocate.

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

22/07/2024

1. Heard.

2. This writ petition has been filed against assessment order dated 21.03.2024 on the submission that the very initiation of proceedings under Section 153C of the Income Tax Act, 1961

(hereinafter referred to as 'the Act') was bad in law as the proceedings could not have been initiated under the scheme of Section 153C of the Act as it stood prior to its deletion with effect from 01.04.2021. It is submitted that show cause notice was issued, reply was filed, but proper opportunity of hearing was not afforded to the petitioner.

3. On the other hand, learned counsel for the respondents, referring to order dated 31.05.2024 passed by this Court in the case of Smt. Rama Gupta Vs. Deputy Commissioner of Income Tax (D.B. Civil Writ Petition No. 9309/2024), would submit that in cases where issuance of notice at the very inception was not challenged but the assessee submitted to the jurisdiction of the authority and sought to challenge only after the assessment order was passed, this Court has not exercised its discretion to entertain the petition and allowed the parties to exhaust statutory alternative remedy of appeal.

4. In the present case, on facts also, we find that notice under Section 153C of the Act was issued to the petitioner way back on 12.01.2023. The petitioner did not challenge the initiation of proceedings and submitted to the jurisdiction of the authorities and participated in the assessment proceedings. It is only when the assessment order is passed that the petitioner seeks to challenge the same by filing present writ petition. The issue with regard to opportunity of hearing can also be examined by the authorities concerned because it is not a case of total absence of opportunity of hearing and the allegation is that proper opportunity of hearing was not afforded.

5. In these circumstances, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution of India to entertain this writ petition because there exists statutory alternative efficacious remedy of appeal to challenge the assessment order.

6. Writ petition is dismissed, however, with liberty to the petitioner to take recourse to the alternative remedy of appeal available to her under the law.

7. Taking into consideration that this writ petition was filed before expiry of period of limitation for filing the appeal, it is directed that in case, the petitioner prefers an appeal within 30 days, the appeal shall be heard and decided by the Appellate Authority on its own merits without going into the issue of limitation.

(ASHUTOSH KUMAR),J (MANINDRA MOHAN SHRIVASTAVA),CJ

MANOJ NARWANI /19