

WA-704-2017

(KAILASH ASSUDANI Vs COMMISSIONER OF INCOME TAX)

16-08-2017

Shri Pratyush Tripathi, Advocate for the appellent.

The challenge in the present appeal is to an order passed by learned Single Bench on 03.08.2017, whereby the writ petition filed by the appellent against an order passed restraining the appellent from transferring or changing the nature of property till passing of an order by Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as "The Act") remained unsuccessful.

The sole argument of learned counsel for the appellent is that the documents necessary to submit response was not supplied by the Initiating Officer therefore, the proceedings have been conducted in an arbitrary manner. However, it is admitted by learned counsel for the appellent that all documents have now been produced before the Adjudicating Authority who has fixed the hearing on 23.08.2017.

In this view of the matter, the argument of learned counsel for the appellent is that he is losing a forum of decision making process to show that there are not sufficient grounds for initiating proceedings against him. The alternative argument is that Adjudicating Authority should be directed to treat the objections raised by the petitioner and pass an order first on such preliminary objections.

We do not find any merit in the present appeal. It is the Adjudicating Authority who is to decide the question of Benami nature of the property. The proceedings under Section 24 of the Act contemplates the issuance of show cause notice as to why the property specified in the notice should not be treated as Benami property. However, the substantive order of treating the property as Benami is required to be passed by Adjudicating Authority under Section 26 of the Act only.

Therefore, the appellant is at liberty to take all such plea of law and facts as may be available to the appellant before the Adjudicating Authority. The Adjudicating Authority shall decide the Benami nature of the property in accordance with law.

Certified Copy as per rules.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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