

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9002 of 2022

M/s. Acharya Harihar Regional Centre Petitioner
for Cancer Research and Treatment
Society, Cuttack

Mr. Jagabandhu Sahoo, Sr. Advocate with
Ms. Kajal Sahoo, Advocate

-versus-

Union of India & Others Opposite Parties
Mr. Radheshyam Chimanka, Sr. Standing Counsel
with Mr. Avinash Kedia, Jr. Standing Counsel for the
Department.

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
21.02.2023

Order No.

04. 1. The challenge in the present writ petition is to an order dated 1st April, 2022 passed by the National Faceless Assessment Centre, Delhi (NFAC) under Section 270A of the Income Tax Act, 1961 (Act) levying a penalty of Rs.16,24,58,324/- for the assessment year 2018-19.
2. It may be noted here that, while directing notice to issue in the petition on 21st April, 2022 it is directed that no coercive action would be taken against the Petitioner pursuant to the aforementioned order.
3. The case of the Petitioner is that against the assessment order dated 23rd April, 2021 of the Assessing Officer (AO) making an addition of Rs.22,92,14,167/-, the Petitioner filed an appeal on 20th

March, 2022, belatedly on account of Covid-19 pandemic. It is stated that the said appeal is still pending.

4. In the assessment order dated 23rd April, 2021 the AO directed initiation of separate penalty proceeding under Section 270A of the Act. Pursuant thereto, show-cause notices were issued to the Petitioner on 26th July, 2021 and 8th October, 2021. A final show-cause notice was issued on 21st February, 2022 and the case was referred to the Designated Verification Unit (DVU) which then served notice on the Petitioner.

5. By letter dated 20th March, 2022, the Petitioner informed the Department that it had preferred an appeal against the assessment order. Nevertheless, by order dated 1st April, 2022 the AO proceeded to levy penalty at 200% of the tax allegedly evaded, thereby calculating penalty as Rs.16,24,58,324/-.

6. Mr. Jagabandhu Sahoo, learned Senior Counsel appearing for the Petitioner points out that in the impugned order dated 1st April, 2022 the NFAC has observed that he invoked Section 270A(2)(b) which reads as under:

“270A:-

(1) xxx xxx

(2) *A person shall be considered to have under-reported his income, if_*

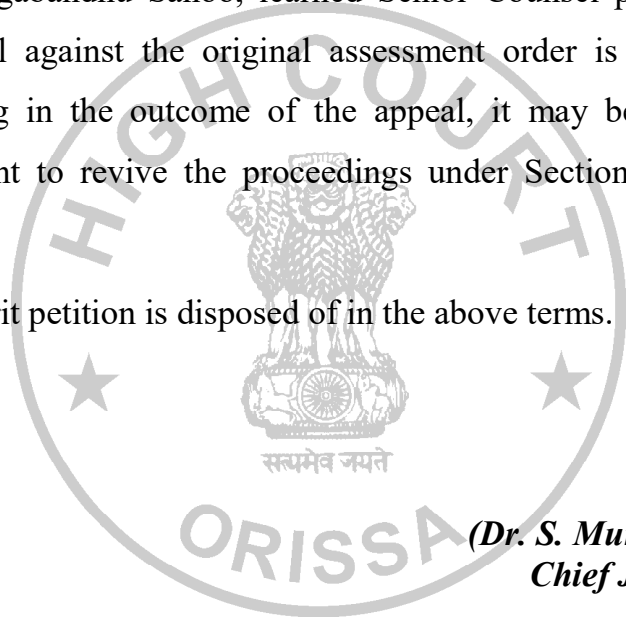
(b) The income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished.”

7. In the present case, it was wrongly noted that the Assessee has not filed any return of income, when in fact Assessee had filed its

return. It was further wrongly noted that the Assessee “has not preferred appeal against the assessment order” when in fact the Petitioner had filed the aforementioned appeal. With both the grounds on which the impugned order under Section 270A of the Act has been passed, being non-existent and there being an erroneous premise on which the NFAC is proceeded, the Court has no hesitation in holding that the impugned order dated 1st April, 2022 is unsustainable in law. It is, accordingly, set aside.

8. Mr. Jagabandhu Sahoo, learned Senior Counsel points out that the appeal against the original assessment order is still pending. Depending in the outcome of the appeal, it may be open to the Department to revive the proceedings under Section 270A of the Act.

9. The writ petition is disposed of in the above terms.



(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

MRS/Laxmikant