

Court No. - 3

Case :- WRIT TAX No. - 206 of 2024

Petitioner :- Smt. Kusum Maheshwari

Respondent :- Union Of India Thru. Secy. Ministry Of Finance , Income Tax Deptt. , New Delhi And Others

Counsel for Petitioner :- Neeraj Kumar Rai,Raj Kumar Singh,Shachindra Pratap Singh

Counsel for Respondent :- A.S.G.I.,Kushagra Dikshit

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Shree Prakash Singh,J.

Heard learned counsel for the petitioner, learned Standing Counsel and Shri Kushagra Dixit along with Shri Neerav Chitravanshi, learned counsel appearing on behalf of respondents no.2 to 5.

This petition has been filed with the following main prayers :-

- i. *To issue a writ, order or direction in the nature of certiorari for quashing the Assessment Order dated 21.03.2022, Notice dated 21.3.2022, under section 156 of the Income Tax Act, 1961 for the Assessment year 2016-2017, demanding a sum of Rs.6688652/- (Rupees Sixty Eight Lacs Eighty Eight Thousand Five Hundred Sixty Two) and notice under Section 221 (1) of the Income Tax Act, 1961 dated 27.05.2024 as contained in Annexure No.1, 2 and 3 to this writ petition.*
- ii. *To issue a writ, order or direction in the nature of mandamus to be issued to the Respondents to drop the penalty under Section 221 (1) of the Income Tax Act, 1961 and rectify the Assessment Order after obtaining Final Report of Departmental Valuation Officer of the Income Tax Department.*
- iii. *To issue a writ, order or direction in the nature of mandamus commanding the*

opposite party no.3, for expeditious disposal of the appeal filed under section 246 (A) of the Income Tax Act, 1961 bearing Appeal No. NFAC/2015-16/10118836 (Kusum Maheshwari vs. Additional/ Joint/ Deputy/ Assistant Commissioner of Income Tax/ Income Tax Officer, National Faceless Assessment Center, Delhi in a time bound period as contained in Annexure No.4 to this writ petition."

It is the case of the petitioner that she had filed her return of the Income tax under Section 139 on 08.10.2016 declaring a total income of Rs.8,91,210/-.

The case of the petitioner was selected for scrutiny by the Department and notice was issued under Section 148 of the Income Tax Act on 30.3.2021. It was alleged that the petitioner had filed a return for Rs.8, 91, 210/- but she had bought property of amount of Rs.1,50,00000/-, the circle rate of which was Rs.2,50,00000/-. The petitioner filed a reply. She denied the allegations made.

The matter was referred to the Valuation Officer under Section 153 but before the report could be submitted by the Valuation Officer the impugned order has been passed.

It has been submitted that petitioner file an appeal challenging the order dated 21.3.2022 but such appeal has remained pending and interim relief prayed by the petitioner has not been considered and recovery orders have been issued on 27.5.2024, hence, this petition has been filed.

Learned counsel for the petitioner has pointed out the apparent error in passing of the order on 21.3.2022 where mention has been made that the matter was referred to the Valuation Officer and the report was awaited but still ignoring the explanation 1 (v) of Section 153, it has been observed that the limitation was expiring on 31.3.2022 and the assessing officer has, therefore, hurriedly passed the order impugned.

The counsel for the respondent on the basis of instructions says that the petitioner has not filed

any application for interim relief in the appeal.

This petition is ***disposed of*** with the direction to the petitioner to file an application for interim relief in the pending appeal within one week from today. If such an application is moved the appellate authority shall consider the application for interim relief on its merits and decide the same within a period of three weeks thereafter.

Order Date :- 5.8.2024

mks