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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-9208-CWP-2024 in/and
CWP-7968-2023 (O&M)
Date of Decision: 10.09.2024

HERO CYCLES LIMITED ....*Petitioner*

V/s.

PRINCIPAL COMMISSIONER OF INCOME TAX, LUDHIANA-1 AND ANOTHER
........*Respondents*

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Alok Mittal, Advocate for the applicant-petitioner.

Mr. Ranvijay Singh, Senior Standing Counsel, for the respondent.

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SANJEEV PRAKASH SHARMA, J. (Oral)

CM-9208-CWP-2024

1. Having regard to the reasons mentioned in the application filed by the petitioner, the same is allowed and document is taken on record as Annexure A-1.

CWP-7968-2023 (O&M)

2. In spite of the interim order passed by this Court in this case on 25.04.2023, which was duly served on the respondents, it is informed that the respondents have proceeded to pass final order dated 22.03.2024 raising demand and making additions, which has been taken on record today itself.

3. Learned counsel for both the parties ar*e ad idem* that the issue involved in the present petition stands finally examined and concluded by this Court in ***CWP No.21509 of 2023 titled as Jasjit Singh vs. Union of India and others***, decided on 29.07.2024, and by the Coordinate Bench in

CWP No.15745 of 2024 titled as Jatinder Singh Bhangu vs. Union of India and others, decided on 19.07.2024.

4. This Court i***n Jasjit Singh*** (supra) held as under:

> *"16. We are in agreement with the view taken by the Coordinate Bench and hold that such circular or instructions by the Board could not have been issued to override statutory provisions or to make them otiose or obsolete. Legislative enactments having financial implications are required to be followed strictly and mandatorily. By exercising the powers contained in Sections 119 and 120 of the Act, 1961 as well as Section 144B (7 & 8), the authorities cannot be allowed to usurp the legal provisions to their own satisfaction and convenience causing hardship to the assessees. It also leaves confusion in the minds of the taxpayers. In the opinion of this Court, instructions and circulars can be issued only for the purpose of supplementing the statutory provisions and for their implementation.*
>
> *17. In view of the aforesaid discussion, there is no occasion to distinguish or take a different view as suggested by the learned counsel for the revenue from what has already been held by the Coordinate Bench.*
>
> *18. Keeping in view the law laid down by the Coordinate Bench (supra), notices issued by the JAO under Section 148*

of the Act, 1961 and the proceedings initiated thereafter without conducting the faceless assessment as envisaged under Section 144B of the Act, 1961, have been found to be contrary to the provisions of the Act, 1961 and accordingly notices dated 28.02.2023, 16.03.2023, 20.03.2024 and 30.03.2023 and order dated 30.03.2023, are set aside for want of jurisdiction.

19. The respondents-revenue would be, however, at liberty to follow the procedure as laid down under the Act, 1961 and proceed accordingly, if so advised.

20. All the writ petitions are allowed. The interim order passed by the Court shall stand merged with the present order."

5. Keeping in view above, we ***allow*** this Writ Petition in the aforesaid terms. The observations and order passed above shall apply *mutatis mutandis* to the present case. Accordingly, impugned order(s)/ notice(s) dated 17.03.2023, 29.03.2023 passed/issued by the respondents are set aside. Another order dated 22.03.2024 passed during the pendency of this writ petition based on the notice issued under Section 148 of the Act, therefore, is also set aside.

6. We find that the contents of the CM to be correct to the extent that the final order dated 22.03.2024 has been passed by the respondent – Assessment Unit, Income Tax Department, though it is in violation of the interim order of this Court dated 25.04.2023, whereby we have restrained the respondents from passing the final order. While we have decided the present writ petition in terms of the judgment in ***Jasjit Singh*** (supra), we propose to issue notice to the concerned officer, who has passed the order dated 22.03.2024 to explain his conduct within a period of 15 days from the date of issuance of notice, as to why the contempt proceedings within the meaning of Section 12 of the Contempt of Courts Act, 1971, be not initiated against him. For the said purpose, the Registry is directed to issue notice to him.

[SANJEEV PRAKASH SHARMA]
JUDGE

September 10, 2024
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[SANJAY VASHISTH]
JUDGE

Whether speaking / reasoned	:	*Yes / No*
Whether Reportable	:	*Yes / No*