

Court No. - 46

Case :- WRIT TAX No. - 521 of 2023

Petitioner :- Ms. Shweta Punj

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Shashi Dhar Shukla

Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Naveen Chandra Gupta

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Syed Aftab Husain Rizvi,J.

Heard Sri S.K. Srivastava, learned counsel for the petitioner, Sri Gaurav Mahajan for the department and Sri N.C. Gupta, learned counsel for Union of India.

Petitioner is an income tax assessee and has challenged the assessment orders passed against her in writ. It is not in issue that the order of assessment is subject to appeal under the Act and that such an appeal in fact has been preferred which is pending, yet the writ petition is pressed on the ground that the appellate authority since is not available in accordance with the statute, therefore, the appeal though instituted it cannot be heard.

The argument advanced by the petitioner is strongly opposed by the respondents.

In order to appreciate the arguments raised, it would be necessary to refer to some of the provisions of the Income-tax Act, 1961 (hereinafter referred to as the 'Act of 1961'). An appeal lies against the order of assessment by virtue of Section 246A of the Act of 1961. The language employed in Section 246A of the Act of 1961 is that any assessee aggrieved by any of the orders stipulated in the section can prefer an appeal to the Commissioner (Appeals). It is under this provision of the statute that the appeals are filed against the orders of assessment, as has been done by the present petitioner.

Section 2(16A) of the Act of 1961 defines Commissioner (Appeals) in following words:-

"[\"Commissioner (Appeals)\" means a person appointed to be a Commissioner of Income-tax (Appeals) under sub-section (1) of section

117;]"

Section 117 of the Act of 1961 provides that Central Government may appoint such persons as it thinks fit to be income tax authorities. Section 117 is reproduced hereinafter:-

"117. (1) The Central Government may appoint such persons as it thinks fit to be income-tax authorities.

(2) Without prejudice to the provisions of sub-section (1), and subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, the Central Government may authorize the Board, or a [Principal Director General or] Director-General, a [Principal Chief Commissioner or] Chief Commissioner or a [Principal Director or] Director or a [Principal Commissioner or] Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner [or Deputy Commissioner].

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income- tax authority authorized in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions."

Income tax authorities are then specified in Section 116 of the Act of 1961. Sub-section (c) of Section 116 is relevant for the present purposes and is extracted hereinafter:-

(c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),"

Sub-clause (c) of Section 116 of the Act of 1961 refers to a set of income tax authorities, namely, Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals). From the statutory scheme, it is thus apparent that Central Government can appoint persons as income tax authorities which includes the Commissioners of Income-tax (Appeals). It is not in issue that Central Government has appointed officers as Commissioners of Income-tax (Appeals) in various offices of the department.

The primary submission of the petitioner is that in fact no such Commissioners of Income-tax (Appeals) have been appointed, inasmuch as the Act of 1961 contemplates creation of a separate cadre for Commissioners of Income-tax (Appeals), which has so far not been constituted/created and therefore, the appointment of Commissioner of Income-tax (Appeals) is not in accordance with law. The petitioner relies upon certain circulars of DOPT (Department of Personnel and Training) in order to contend that

the post of Commissioner of Income-tax (Appeals) is equivalent to the post of Joint Secretary to the Government of India and by virtue of various pronouncements of the Supreme Court in Union of India & Ors. vs. N.P. Dhamania & Ors. 1995 Suppl (1) SCC 1 and other judgments, the authority competent to appoint such Commissioner of Income-tax (Appeals) would be the Appointment Committee of the Cabinet. It is submitted that since the appointment orders of Commissioner of Income-tax (Appeals) are not passed/approved by the Appointment Committee of the Cabinet, therefore, the appointment made by Central Government of Commissioner of Income-tax (Appeals) is without an authority.

We are not impressed by the above-noted arguments of the petitioner for the reasons enumerated hereinafter:-

(i) First and foremost, we find that the statute, i.e. the Act of 1961 is a self contained code which clearly vests jurisdiction with the Central Government to appoint such persons as it thinks fit to be income tax authorities as are specified in Section 116 of the Act. The income tax authorities clearly includes Commissioners of Income-tax (Appeals) and, therefore, the Central Government would have the jurisdiction to appoint an officer as Commissioner of Income-tax (Appeals). Officers belonging to the cadre of Indian Revenue Services have been appointed as Commissioner of Income-tax (Appeals).

(ii) Our attention is not drawn to any express or implied provision contained in the Act of 1961 which may require import of the procedure stipulated for appointment of Joint Secretary to the Government of India to the appointment procedure specified for the Commissioner of Income-tax (Appeals).

(iii) The argument of the petitioner proceeds on a factual and legal misconception that the post of Commissioner of Income-tax (Appeals) since is in the same grade and is at par with the Joint Secretary to the Government of India, therefore, the procedure for appointment which is specified under the Rules of Business for appointment of Joint Secretary to the Government of India would ipso facto apply to the appointment of Commissioner of Income-tax (Appeals). This argument is not sustainable, inasmuch as the Commissioner of Income-tax (Appeals) is a separate and distinct post from the post of Joint Secretary to the Government of India and merely because the Commissioner of Income-tax (Appeals) draws the same scale of pay which is admissible to a Joint Secretary to the Government of India, all provisions which are applicable for appointing Joint Secretary to the Government of

India would ipso facto get attracted in the matter of appointment of Commissioner of Income-tax (Appeals).

(iv) The appointment of Commissioner of Income-tax (Appeals) is regulated by the provisions of the Act of 1961 and procedure for appointment of Joint Secretary to the Government of India would not get attracted by a ingenious process of reasoning unless there is a specific provision in law to indicate so. We do not find any such stipulation in the Act of 1961, requiring grant of approval to the appointment of Commissioner of Income-tax (Appeals) by the Appointment Committee of the Cabinet. Even creation of a separate cadre of officers for Commissioner of Income-tax (Appeals) does not appear to be essential or mandatory in the scheme of the Act of 1961.

(v) The arguments raised on behalf of the petitioner apparently are far-fetched and at best of academic importance otherwise which do not in any manner affect the right of an assessee to avail of the remedy of appeal created under the statute.

In light of the deliberations and observations made above, we find this petition to be lacking in substance. The right of the petitioner to avail the remedy of appeal against the order of assessment is amply protected. The writ petition, therefore, is dismissed.

Order Date :- 20.7.2023

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