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WPA 2852 of 2022

Unisource Hydro Carbon Services Private Limited &
Anr.

Vs
Union of India & Ors.

Mr. Abhrotosh Majumdar, Ld. Sr. Adv.,
Mr. Himangshu Kumar Ray
... For the Petitioners.
Mr. S.N. Dutta
... For the Respondents.

Heard learned Advocates appearing for the parties.

In this writ petition, petitioners have challenged the impugned order of the Commissioner dated 15th December, 2021 under its discretionary power under Section 264 of the Income Tax Act, 1961 and subsequent order under Section 154 of the Act dated 17th January, 2022 arising out of the assessment order passed under Section 143 (3) of the Act, dated 14th June, 2021, relating to assessment year 2018-19 wherein taxable amount of Rs. 22,03,56,600/- was determined and it is admitted position that till date petitioner has not paid a single penny in respect of the aforesaid demand. This is the second round of litigation initiated by the petitioners before this Court. In the first round of litigation, writ petition, being WPA 11041 of 2021 was dismissed by this court by an elaborate order dated 25th August, 2021 and since the aforesaid writ petition was dismissed without going into the merits of the impugned assessment order

dated 4th June, 2021, was an appealable order before the Commissioner of Income Tax(Appeal) which has a very wide power to go into both on facts and on question of law while the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot act as an Appellate Authority over the assessment order on merits, facts and evidence involve in an assessment proceeding which is the job of the Appellate Authority, that is, Commissioner of Income Tax (Appeal) which the petitioner avoided to avail even after dismissal of the earlier Writ Petition when doors of the Appellate Forum was opened to the writ petitioners since the aforesaid writ petition was dismissed only on the ground that there was no violation of principle of natural justice. In spite of availability of statutory Appellate Forum, petitioners has chosen to invoke Section 264 of the Income Tax Act for exercising the discretionary power of revision against the assessment order in question which is not Appealable though at the time of filing the revisional application there was no bar of limitation to file the appeal.

It is a well-settled principle of law that power of Appellate Authority is much wider than the Revisional Authority and the Commissioner in exercise of his discretionary power of revision under Section 264 of

the Act cannot act as an Appellate Authority and go into the merits of the assessment by re-appreciating the facts and evidence and all materials. Further in view of Explanation I below Section 264 (7) of the Income Tax Act, 1961, clearly says that any order of the Commissioner under Section 264 of the Act declining to interfere will be deemed not to be an order prejudicial to the assessee.

Considering the facts and circumstances of the case I am of the view that petitioners after dismissal of the earlier petition by this Court against the same assessment order without filing any statutory Appeal before the Commissioner of Income Tax (Appeals) with sole intention of avoiding the payment of huge amount of tax determined in assessment order have deliberately chosen the forum of revision under Section 264 of the Act with a view to make out a case to come up before this Court again under Article 226 of the Constitution of India tactfully indirectly to get interference in assessment order which the Commissioner in exercising the power under Section 264 of the Act has refused and this Court has also refused in the first round of litigation in WPA No. 11041 of 2021.

Considering the facts and circumstances of the case as also the submission of the parties and conduct

of the petitioners, I am not inclined to entertain this writ petition and, accordingly, this writ petition, being WPA 2852 of 2022 is dismissed.

(Md. Nizamuddin, J.)