

Writ petition could be filed against reassessment order passed without hearing assessee

Summary – The High Court of Meghalaya in a recent case of North Eastern Electric Power Corporation., (the Assessee) held that where Assessing Officer did not furnish reasons for issuing reassessment notice so as to enable assessee to file objections and passed reassessment order without hearing assessee, it would be a breach of principles of natural justice against which writ petition could be filed before High Court

Facts

- The petitioner-assessee was a power corporation. It filed its returns of income for the assessment years 2012-13, 2013-14, 2015-16 and 2016-17. The returns were duly processed under section 143(1).
- Later on, the Assessing Officer proposed reassessment of income for the said assessment years.
- Filing the instant writ petition, the assessee-corporation submitted that the Assessing Officer did not furnish the reasons while issuing the reassessment notice so as to enable the assessee-corporation to file the objections which were required to be disposed of by the Assessing Officer by passing a speaking order. Until then, the Assessing Officer could not pass the assessment order.
- The revenue submitted that the instant writ petitions were not maintainable because the assessee-corporation had efficacious remedies available *i.e.* the appeal before the Deputy Commissioner (Appeals); thereafter, the appeal before the Appellate Tribunal; then against the order of the Tribunal the appeal before the High Court.
- In opposition, the assessee-corporation submitted that the availability of such remedies would not deprive it from invoking extraordinary jurisdiction of the High Court when the principles of natural justice and the procedures for reassessment had not been followed.

Held

- Admittedly, reasons for re-opening of assessments have not been furnished to the petitioner. Objection of furnishing reasons was to enable the petitioner to file objections regarding reopening and then on filing of objections, the petitioner had the right of hearing before the Assessing Officer. Then, the Assessing Officer after considering the objections and after hearing the petitioner was to deal with the objections by passing a speaking order, same has not been done. In addition thereto, the petitioner while responding to the notices under section 143(2) and 142(1) had requested for extending time for production of requisite documents for the reasons as detailed therein, same too has been ignored. While ignoring, to follow statutory requirements, filing objections and hearing, the impugned assessment and demand orders have been passed which in turn would suggest that the respondent has not only breached the principles of natural justice but also breached the procedure which was required to be followed for decision (reassessment).

- For the stated reasons and the law, it is to be held that there has been a breach of the principles of natural justice and also the procedure required to be adopted for passing assessment orders on reassessment and demand orders, have not been followed. Therefore, it is an exceptional case for invoking power under Article 226 of the Constitution of India. Both the orders being unsustainable, if the petitioner is asked to avail the remedies of appeal, matter will unnecessarily get protracted.
- The writ petitions are to be allowed.