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RAJASTHAN HIGH COURT

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

सत्यमेव जयते

D.B. Civil Writ Petition No. 16631/2024

Radha Mohan Maheshwari S/o Badri Narain Totla

-----Petitioner

Versus

Assistant Commissioner Of Income Tax & Anr.

-----Respondents

For Petitioner(s) : Ms. Ritika Jha for
Mr. Siddharth Ranka
For Respondent(s) : Mr. Sarvesh Jain

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

Order

25/10/2024

Heard on prayer for stay.

Learned counsel for the petitioner would submit that it is settled proposition of law irrespective of the nature of assessment proceedings and failure/contravention that the penalty proceedings could not be initiated unless a *prima-facie* satisfaction is recorded by the Assessing Officer, which is reflected in the assessment order. For this purpose, he has relied upon the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax, Panchkula Versus M/s Jai Laxmi Rice Mills, [2015] 379 ITR 521 (SC)**, the decision of the Gujarat High Court in the case of **The Principal Commissioner of Income Tax-1 Versus Parivar Television PVT. LTD., 2023 (10) TMI 707** and the decision of the Telangana High Court in the case of **Srinivasa Reddy Reddeppagari Versus Joint Commissioner of Income Tax,**

**Central Circle, Central Range 2, Telangana, 2022 (12) TMI
1446.**

Learned counsel for the respondent-Revenue would submit that the decisions, which have been relied upon, related to cases of penalty in respect of specified class of contravention/violation wherein the provision of law itself mandated recording *prima-facie* satisfaction that penalty proceedings are required to be initiated, which is not so in the present case, as present is a case relating to initiation of penalty proceedings independent of any satisfaction recorded in assessment proceedings.

Having heard learned counsel for the parties and having gone through the various decisions, which have been cited at the bar before us, we find that in plethora of decisions including order of the Hon'ble Supreme Court, opinion is formed that unless a satisfaction is recorded in the assessment order itself, to the effect that the penalty proceedings are required to be initiated, the proceedings may not be initiated. The submission of learned counsel for the respondents is more in the nature of carving out an exception to the general principle, which has been adumbrated in various decisions cited before us. Therefore, we are of the view that the petitioner should be protected by an interim order.

It is ordered that no coercive steps be taken against the petitioner towards recovery of penalty.

Matters be listed after four weeks alongwith D.B. Civil Writ Petition No.12783/2024 and other connected matters.

(ASHUTOSH KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),CJ