

GAHC010072292022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/142/2022

SHARDA LUNKAR
D/O LATE BHANWARLAL BHURA, R/O GROUND FLOOR, SAGAR
APARTMENT, S.J. ROAD, ATHGAON, GUWAHATI-781001, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, ROOM NO. 46,
NORTH BLOCK, NEW DELHI-110001

2:PRINCIPAL COMMISSIONER OF INCOME TAX
GUWAHATI-I
AAYAKAR BHAWAN
CHRISTIAN BASTI
GUWAHATI-781005

3:INCOME TAX OFFICER
WARD-2(1)
GUWAHATI
AAYAKAR BHAWAN
CHRISTIAN BASTI
GUWAHATI-781005

4:NATIONAL FACESLESS ASSESSMENT CENTRE
DELHI
INCOME TAX DEPARTMENT
ARA CENTRE
E-2
GROUND FLOOR

JHANDEWALA EXTENSION
NEW DELHI-11000

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

20.01.2023

[N. Kotiswar Singh, CJ(Acting)]

Heard Dr. A.K. Saraf, learned Senior counsel assisted by Mr. P. Baruah, for the appellant. Also heard Mr. S. Chetia, learned counsel appearing for the respondents.

2. The present appeal has been preferred against the order dated 31.03.2022 passed by the learned Single Judge in WP(C) No.2324/2022 by which the challenge putup against the notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 by which the authorities sought to reopen the assessment year of 2015-16 was rejected by the learned Single Judge on the ground that there is an alternative remedy available under Section 246(i) (b) of the Income Tax Act, 1961.

3. It is the case of the learned Senior counsel for the appellant that the said appellate forum is available in respect of the assessment made after the reopening but there is no such appellate forum available *qua* notice issued under Section 148 of the Income Tax Act, 1961. In this regard, learned Senior counsel for the appellant also relies on the decision of the Hon'ble Supreme Court in ***Red Chilli International Sales Vs. Income Tax Officer & Anr.***

in Special Leave to Appeal (C) No.86/2023, decided on 03.01.2023 [2023 LiveLaw (SC) 16], which reads as follows:-

".....

We with the petitioner that the impugned judgment rejecting the writ petition on the ground of alternative remedy does not take into consideration several judgments of this Court, on the jurisdiction of High Court, as writ petitions have been entertained to be examined whether the jurisdiction preconditions for issue of notice under Section 148 of the Income Tax Act, 1961 is satisfied. The provisions of reopening under the Income Tax Act, 1961 have undergone an amendment by the Finance Act, 2021, and consequently the matter would require a deeper and in-depth consideration keeping in view the earlier case law. Accordingly, we set aside the observations made by the High Court in the alternative remedy, clarify that this issue would be examined in depth by the High Court if and when it arise for consideration. We do deem it open to examine this issue in the present case after having examined the noticed under Section 148A(b) including the annexure thereto, the reply filed by the petitioner and the order under Section 148A(d) of the Income Tax Act, 1961.

Recording the aforesaid, the special leave petition is disposed of. We clarify that the dismissal of the special leave petition would not be construed as a findings or observations on the merits on case.

....."

4. We are also of the view that since the appellate forum is provided as regards the reassessment subsequently made, but not regarding the notice issued, the challenge to the issuance of the notice under Section 148 may be heard, in as much as there is no alternative remedy available to challenge the notice issued under Section 148 of the Income Tax Act, 1961.

5. Accordingly, we allow this appeal by setting aside the impugned order dated 31.03.2022 passed in WP(C) No.2324/2022 and the matter is remanded to the learned Single

Judge for fresh consideration on merit of the plea of the appellant.

Sd/- Soumitra Saikia
JUDGE

Sd/- N. Kotiswar Singh
CHIEF JUSTICE (ACTING)

Comparing Assistant