ORDER SHEET

WPO/230/2018

IA NO: GA/1/2020 (Old No.:GA/2563/2018) GA/2/2020

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SHRI SWATARUP BANERJEE & ORS.
Versus
INCOME TAX OFFICER (HQRS)-8, KOLKATA & ORS.

BEFORE:
The Hon'ble JUSTICE SUBRATA TALUKDAR

Date : 30th September, 2020.

For Petitioners : Mr. Raja Basu Chowdhry, Adv.

For Respondents : Mr. Dhiraj Kumar Trivedi, Adv.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

By the order dated 24th September, 2020, this Court permitted learned Counsel appearing for the Revenue Authority to revert on the next date with appropriate instructions connected to the Notification dated 13th September, 2019 and numbered as **S.O. 4455(E)** of the Ministry of Finance, Department of Revenue, Government of India (for short, the said Notification).

Thereafter, on the same date, in presence of learned Counsel for both the petitioner and for the Revenue Authority and by consent of the parties, this Court directed the matter to appear today at the first sitting. Such direction was passed considering the fact that the matter stands *Assigned* before this Bench.

Mr. Basu Chowdhury, learned Counsel appearing for the petitioner, submits that the issue relates to the non-payment of the third instalment by the petitioner under the Income Tax Declaration Scheme, 2016. The third instalment was required to be paid on and by 30th September, 2017. The petitioner, although having declared his income under Section 183 of the Finance Act, 2016 and, such declaration having been acknowledged by the Revenue Authority, the petitioner was called upon to pay additional tax plus surcharge and penalty in three instalments. The petitioner has admittedly paid the first two instalments but, due to his illness, claims to have been unable to pay the third instalment within the period initially prescribed.

Mr. Basu Chowdhury relies on the representation of the petitioner submitted on 4th December, 2017 as addressed to the respondent no.2/the Principal Commissioner of Income Tax, seeking extension of time to pay the third instalment. The representation left undecided and arrears of tax, surcharge plus penalty mounting in the meantime, the petitioner filed the present writ petition.

Today, Mr. Basu Chowdhury relies on the Notification dated 13th December, 2019 to submit that the Revenue Authority, in its wisdom, has decided to extend the period for completing payments under the declarations made by the assessees vide sub-Section (1) of Section 183 of the Finance Act, 2016. Such payment is required to be completed on and by 31st January, 2020, together with the applicable interest.

Learned Counsel for the petitioner further points out that for the benefit of the assessees the said Notification has been given retrospective effect. The petitioner, therefore, claims parity of treatment under the said Notification dated 13th December, 2019 on the ground that such was issued coterminous for the period when this writ petition was pending and, without the leave of the Hon'ble Court neither the petitioner nor the concerned Revenue Authority could *suo motu* take recourse to the said Notification. Additionally, for reasons too obvious to state connected to the present pandemic, the matter could not be earlier taken up at the convenience of all parties by this Court.

Mr. Trivedi, learned Counsel appearing for the Revenue Authority, submits that the ramifications connected to the said Notification dated 13th December, 2019 *qua* the petitioner are required to be assessed on facts by the Respondent no.2/the Principal Commissioner of Income Tax. Such an exercise, if directed by the Court, could be done within a reasonable time period.

Having heard the parties and considering the materials placed this Court, for the benefit of this discussion and direction to follow, finds it appropriate to fully reproduce below this Notification dated 13th December, 2019 for the convenience of all the parties :

> *"**S.O. 4455(E).–** In exercise of the powers conferred by the proviso to sub-section (1) of section 187 of the Finance Act, 2016 (28 of 2016), the Central Government hereby specifies that the persons who have made a declaration under sub-section (1) of section 183, but have not made payment of the tax and surcharge payable under section 184 of penalty payable under section 185 of the said Act, in respect of the undisclosed income, on or before the due date notified by the Central Government vide notification number S.O. 1830(E), dated the 19th May, 2016, (as subsequently amended vide notification number S.O. 2476 (E), dated the 20th July, 2016), may make the payment of such amount on or before the 31st day of January, 2020, along with interest on such amount, at the rate of one per cent. for every month or part of a month comprised in the period commencing on the date immediately*

following the said due date as so notified and ending on the date of such payment.

2. This notification shall be deemed to have come into force with effect from the 1st day of June, 2016.

[Notification No.103/2019/F. No.370149/159/2019-TPL]

ANKUR GOYAL, Under Secy.

Explanatory Memorandum.– *It is hereby certified that no person is being adversely affected by giving retrospective effect to this notification."*

This Court is also of the view that neither the Revenue Authority nor the petitioner could act during the period prescribed by the said Notification without the leave of the Hon'ble Court. This Court is of the further view that the prayer of the petitioner for extension of time deserves to be attended to by the Revenue Authority under the Notification dated 13th December, 2019 since such prayer was live and pending during the period of subsistence of the Notification entitling the petitioner to retrospective consideration.

In the backdrop of the above discussion, on the particular facts of this case, the issue is remanded to the respondent no.2/the Principal Commissioner of Income Tax to consider the same on merits in the context of the observations made hereinabove. It is expected that the above directed exercise shall be completed not later than a period of six weeks from the date of communication of this order.

W.P.O. No. 230 of 2018 along with its connected applications being **GA/1/2020** and **GA/2/2020 (Old No:GA/2563/2018)** stand thus **disposed of**.

(SUBRATA TALUKDAR, J.)

K. Banerjee
A.R. [C.R.]