

17-12-2021

Item No.89
Subrata

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.6838 of 2014

R.A.A. Arsalan Enterprise Private Limited & Anr.

-vs-

**Deputy Commissioner of Income Tax, Circle-8, Kolkata &
Anr.**

Mr. Malay Dhar

Mr. Bhaskar Sengupta ...for the petitioners

Ms. Sucharita Biswas ...for the respondents

Heard learned advocates appearing for the parties.

In this writ petition, petitioners have challenged legality and validity of the impugned notice dated December 14, 2012 (Annexure P3, p.34) under section 148 of the Income Tax Act, 1961 pertaining to the assessment year 2011-12.

Facts involved in brief in the instant case are that the respondent-income tax officer sought to invoke the provisions of section 147 of the Income Tax Act, 1961 for reopening the assessment relating to the relevant assessment year 2011-12 on the grounds that in course of survey, which took place on January 4, 2011, a pen drive was impounded which, according to the petitioners, belonged to the petitioner from which some incriminating materials were received. In this matter, summary assessment was made in the case of the petitioners on August 24, 2012, and time to complete the regular assessment under section 143(3) of the 1961 Act was available till September 30, 2012 as appears from para.7 of the affidavit-in-opposition of the respondents, yet the respondent did not exercise its power to made scrutiny assessment under Section 143 of the Act and utilise the

said material, if at all the same were incriminating.

So it is clear that the materials upon which the assessing officer wants to rely for invoking section 147 of the 1961 Act and issuing notice under section 148 of the Act were available to the assessing officer concerned much prior to the date of expiry of the time for making scrutiny assessment under section 143(3) of the Act which the assessing officer did not exercise in this case for the reason best known to him.

The petitioners, it appears from the record, have filed an objection against the impugned notice under section 148 of the Act by a letter dated January 24, 2014 as appears from page 44 of the writ petition and have taken specific legal objection against issuance of notice under section 148 of the Act, on the grounds that after the time to make scrutiny assessment was allowed to be expired on September 30, 2012, in spite of materials available which came to the knowledge of the assessing officer in course of survey much prior to the expiry of the time to make scrutiny assessment under section 143(3) of the Act, the impugned notice under Section 148 of the Act was issued.

Relevant portion of the said objection dated January 24, 2014 is quoted below:–

“ ”

It appears that the assessment was reopened on the basis of the datas obtained in a Pen Drive in the course of survey. The survey took place on 4.1.2011 pertaining to the asstt. Year in question. The return for the aforesaid year was duly filed within the time allowed i.e. by 30th Sept. 2013. As per CBDT's Instruction all the survey cases have to be taken up for scrutiny if any undisclosed income is suspected by the department. The normal limitation for issue of notice U/s.143(2) expired on 30.9.2012 as per the provisions of the I.T. Act but you did not consider the case to be taken up for scrutiny even though all the impounded materials were with you right from Jan. 2011 till 30th Sept. 2012. Thereafter on 14.12.2012 you have issued the notice U/s.148 just to cover up the limitation which already expired on 30th Sept. 2012. Therefore the very issue of notice

U/s. 148 is not in accordance with law. The issue is covered by verdicts of the higher authorities.”

It appears from record that the respondent-assessing officer has disposed of the aforesaid objection of the petitioners by an order dated January 30, 2014 as appears from page 58 of the writ petition and from which it appears that the assessing officer has not at all dealt with the issues/objections/contentions raised by the petitioners in the aforesaid objection.

Petitioner in support of its contention rely on a decision of the Delhi High Court in the case of Klm Royal Dutch Airlines v. Assistant Director of Income-Tax reported in 292 ITR 49 (Del.).

Paragraph 15 of the aforesaid judgement is relevant to this case which is quoted below:–

“Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no ‘fresh evidence or material’ could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the AO for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular AY, it would have to be assumed that since proceedings had not been opened under Section 143(2), the Return had been accepted as correct. It may be argued that thereafter recourse could be taken to Section 147, provided fresh material had been received by the AO after the expiry of Page 0603 limitation fixed for framing the original assessment. So far as the present case is concerned we are of the view that it is evident that, faced with severe paucity of time, the AO had attempted to travel the path of Section 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law.”

Learned counsel appearing for the respondents is not able to contradict the facts which appear from record and the allegation of the petitioners which are substantiated by record as well as proposition of law and also is not able to distinguish the judgement of the Delhi

High Court in the case of Klm Royal Dutch Airlines v. Assistant Director of Income-Tax (supra).

Considering the submissions of the parties and the facts which appear from record and the judgement of the Delhi Court in the case of Klm Royal Dutch Airlines v. Assistant Director of Income-Tax (supra), I am of the considered opinion that the impugned notice dated December 14, 2012 under section 148 of the Income Tax Act, 1961 is not sustainable in law and is hereby quashed and legal consequence will follow on quashing of the impugned notice. However, quashing of the impugned notice will not prevent the respondent from taking any other course of action, if it is available under the law.

With the aforesaid observations, WPA No.6838 of 2014 stands disposed of by allowing the same.

[Md. Nizamuddin, J]

