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WPO 764 of 2021

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

DELIGHTED HOLDINGS PRIVATE LIMITED
VERSUS
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 20th September, 2021.

APPEARANCE:
Mr. Pranit Bag,Adv.
Mr. Anirudhya Dutta,Adv.

Mr. Y.J.Dastoor,Sr. Adv.
Mr. Debasish Chowdhury,Adv.
Mr. Sushil Kr. Mishra,Adv.

The Court:- Affidavit of service filed in Court today be kept with the record.

Heard both the parties. In this writ petition petitioner has challenged the legality and validity of the notice dated 27th March, 2018 relating to assessment year 2013-14 under Section 148 of the Income Tax Act, 1961 on the ground that the assessing officer/respondent concerned in respect of the same assessment year has already issued notice earlier on 27th March, 2018 under the same Section 148 of the Income Tax Act, 1961 which has culminated into the final assessment order dated 16th November, 2018 under Section 147/143 (3) of the Income Tax Act, 1961 and against the said assessment order, petitioner has already filed appeal before the CIT appeal which is still pending.

Learned Advocate appearing for the petitioner submits that the second notice under Section 148 of the Act in respect of the same assessment year is invalid and illegal since there is no provision under the Income Tax Act, 1961 for issuing second notice under Section 148 of the Act when the first notice under

Section 148 of the Act has culminated into final assessment order under Section 147 of the Act.

Learned Advocate appearing for the income tax authorities/respondents could not satisfy this Court from any legal provision for justification of such action of the respondent, income tax authority in issuing second notice under Section 148 of the Income Tax Act, 1961.

Considering the submissions of the parties and what appears from record, in my considered opinion impugned second notice under Section 148 of the Income Tax Act, 1961, is illegal and invalid on the face of it since nowhere under the Income Tax Act, 1961, there is any provision which authorizes the Assessing Officer to reopen an assessment twice and to issue second notice under Section 148 of the Income Tax Act, 1961, in respect of the same assessment year where already a notice under Section 148 of the Income Tax Act, 1961 was issued and reassessment order under Section 147 of the Income Tax Act, 1961, was passed. In my considered opinion second impugned notice dated 16th April, 2021 under Section 148 of the Income Tax Act, 1961 relating to assessment year 2013-14 is not sustainable in law and is accordingly quashed.

This writ petition, being WPO 764 of 2021 is, accordingly, disposed of by allowing the same with no order as to cost.

(MD. NIZAMUDDIN, J.)

S.Chandra