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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA No. GA/1/2021
WITH
WPO/1151/2021
IN
APOT/205/2021

R. B. JEWELLERS PRIVATE LIMITED (ON MERGER OF B. A. GHADAGE JEWELLERS PRIVATE LIMITED)
Vs
UNION OF INDIA AND ANR.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : December 15, 2021.

(Via video conference)

Appearance:
Mr. Ramesh Chowdhury, Adv.
Mr. T.K. Mitra, Adv.
Mr. P. Chatterjee, Adv.
... for the appellant.

Mr. P.K. Bhowmik, Adv.
Mr. Asok Bhowmik, Adv.
... for the respondents.

The Court : This intra court appeal filed by the writ petitioner questions the order passed by the learned Single Bench dated 26th November, 2021 wherein the prayers sought for by the appellant for grant of an order of interim injunction to restrain the respondent/Assessing Officer from proceeding with the assessment pursuant to the order passed under Section 153A of the Income Tax Act, 1961 (the 'Act' for brevity) was denied. Learned Single Bench by the impugned order has directed the respondent to file affidavit-in-opposition within two weeks from the date of the order and giving liberty to the appellant/writ petitioner to file reply thereof within one week thereafter and directed the matter to be listed for final hearing after six weeks.

Further the learned Writ Court held that any action taken by the respondent in the meantime will abide by the result in the writ petition.

Mr. Ramesh Chowdhury, learned Counsel appearing for the appellant submitted that pursuant to the order passed under Section 153A dated 5th November, 2021, a notice has been issued by the Assessing Officer and, therefore, the assessee prayed for appropriate interim orders in the writ petition which prayer has not been accepted and the learned Court has made an observation that any orders passed by the Assessing Officer will abide by the decision in the writ petition. Therefore, it is submitted that interest of the appellant/assessee be protected till the writ petition is heard and disposed of.

We have heard Mr. P K Bhowmick, learned standing counsel and Mr. Asok Bhowmick, learned junior standing counsel appearing for the respondent/department on the above submission of the learned Counsel for the appellant.

The appellant before filing the present writ petition had earlier approached this Court and filed WPO 440 of 2021 wherein the appellant/writ petitioner had challenged the notice dated 27th February, 2021 issued under Section 153A of the Act on the ground that the said relevant assessment year (AY 2012-13) was already part of an assessment of an earlier search and seizure and final assessment order under Section 153A of the Act was already passed. Further it was contended that in the second search and seizure again including the same assessment year (i.e. AY 2012-13) in the proceedings under Section 153A is illegal and without jurisdiction since no new incriminating documents or materials are there to proceed again by issuing notice under Section 153A of the Act relating to the same assessment year. The learned Writ Court did not accede to the prayers sought for by the appellant/writ petitioner to quash the said notice but directed the objections filed by the appellant dated 15th March, 2021 be disposed of by passing a reasoned and speaking order in accordance with law after giving opportunity of hearing to the appellant or their authorised representative and giving liberty to the appellant to raise all points which had been raised in writ petition before the Assessing Officer. The learned Writ Court had also directed that till the objections are disposed of, the Assessing Officer will not proceed further in the matter. Pursuant to such direction, the objections filed by the appellant, the writ petition was considered and an opportunity of hearing was granted to the authorised representative of the appellant and an order was passed on 5th November, 2021 which is impugned in WPO 1151 of 2021.

In our considered view, if an interim protection is not afforded to the appellant, there is every likelihood of the writ petition becoming infructuous as the respondent Assessing Officer will further proceed in the matter. The learned Writ Court had entertained the writ petition and thought it fit to call for affidavit in opposition and also granted liberty to the appellant to file reply to the affidavit in opposition. Therefore, we are of the view an interim protection should be granted in favour of the appellant/assessee till the writ petition is heard out and disposed of. We took note of the submission of the learned Senior Counsel for the revenue that assessment may become time barred if the Assessing Officer is restrained from passing the order. This contention is a valid contention and an interim order cannot operate having the effect of nullifying the statutory provision. Therefore, we are of the view the following order would meet the ends of justice.

Accordingly, the appeal stands disposed of by directing the Assessing Officer to proceed to pass the assessment order but such order shall not be given effect to and abide by the decision in the writ petition, namely, WPO 1151 of 2021. The parties to the writ petition shall comply with the directions issued by the learned Writ Court in its order dated 26th November, 2021.

During the course of completion of the assessment, we give liberty to the appellant/assessee to participate in the enquiry that may be called for by the Assessing Officer and the same shall be without prejudice to the rights and contentions of the appellant which has been raised in the writ petition.

Consequently, the stay application stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH.