02-05-2022
Item No.15
Subrata

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.4153 of 2022
Jyoti Sanghi
-vs-
Union of India & Ors.

Mr. Anuj Kumar Mishra …for the petitioner

Mr. Tilak Mitra …for the respondents

Affidavit filed by the respondents be taken on record.

Heard learned advocates appearing for the respective parties.

Petitioner in this writ petition is aggrieved by the issuance of impugned notice under section 148 of the Income Tax Act, 1961 on the grounds that the same is barred by limitation and that the respondent-income tax authority concerned, before issuing the impugned notices under section 148 of the 1961 Act, has not observed the statutory formalities under section 148A of the 1961 Act as prescribed by the Finance Act, 2021 which are applicable with effect from 1st April 2021 before issuance of notices under section 148 of the 1961 Act on or after 1st April 2021.

Learned advocate for the respondent was given opportunity to file any document or affidavit to establish as to whether the impugned notice under section 148 of the Income Tax Act, 1961 which shows that it was signed on March 31, 2021 but when actually it was uploaded for service of the same, since it is the allegation of the petitioner that the same was received by e-mail on April 1, 2021 on 5.10 a.m.

Learned advocate for the respondents has failed to submit any such document or affidavit that the impugned notice was uploaded within March 31, 2021. Learned advocate for the petitioner relies on a copy of the e-mail on page 23 of the writ petition which shows the time of e-mail of the impugned notice on April 4, 2021 at 5.10 a.m.

In view of the admitted position that the impugned notice was issued after March 31, 2021, I am of the considered view that the case falls under newly amended proceeding under section 147 of the Income Tax Act, 1961.

Considering these facts, I am of the considered view that this case clearly falls under the amended Act relating to proceedings under section 147 of the Act under which issuance of notice under section 148A of the Act is mandatory before issuing any notice under section 148 of the amended Act which has not been complied with in this case.

Considering the above facts and circumstances of the case and in view of the order of this court in the case of **Bagaria Properties and Investment Private Limited & Anr. v. Union of India & Ors. reported in (2022) 134 taxman.com 196 (Calcutta)** and also in the case of **Monoj Jain v. Union of India reported in (2022) 134 taxman.com 173 (Calcutta**), the impugned notice under section 148 of the Act and all subsequent proceedings are not sustainable in law and the same are quashed.

However, quashing of the impugned notice and proceeding will not debar the respondent-authority concerned to issue any fresh notice in future in accordance with law.

With the above observations, WPA No.4153 of 2022 stands disposed of.

[Md. Nizamuddin, J]