5.4.2022
ks
sl. 6

WPA 4357 of 2022

Satya Ranjan Malakar
Vs
Union of India & Ors.

Mr. Pratip Mukherjee,
Mr. Omar Faruk Gazi,
Mr. Atarul Haque Molla
... For the Petitioner.
Mr. Om Narayan Rai
... For the UOI.

Heard Learned Counsel appearing for the parties.

In this writ petition, petitioner has challenged the impugned notice dated 31st March, 2021 under Section 148 of the Income Tax Act, 1961. This is a case where reopening of assessment has been initiated within four years from the end of relevant assessment year. It appears from record that petitioner has filed objection against the impugned notice under Section 148 of the Act which has been considered and disposed of by order dated 28th February, 2022 as appears at page 73 being annexure P-14 to the writ petition and on perusal of the aforesaid impugned order of rejection I find that the same was passed after giving opportunity of hearing to the petitioner and elaborate discussion has been made in the impugned order of rejection of the objection against the aforesaid notice under Section 148 of the Act and I find that the impugned order of rejection is a speaking one and has elaborate discussion and in exercise of

Constitutional WritJurisdiction of this Court, this Court cannot act as an Appellate Authority and substitute the findings and reasoning given by the assessing officer in the impugned order of rejection. It is a well-settled principle of law that the Writ Court in exercise of judicial review it has to look only legality of the decision making process and not the decision itself. I do not find any procedural infirmity in passing the impugned order of rejection of the objection of the petitioner. In my view what the writ court is to look it as to whether prima facie there is some case for reopening of assessment under Section 147 of the Actfor escapement of income in course of regular assessment and not the final conclusion of escapement of income at this stage, by the Assessing Officer. I am of the considered view that in exercise of its constitutional writ jurisdiction this Court should not go into sufficiency of the recorded reason or sufficiency of the order of rejection of petitioner's objection against impugned notice under Section 148 of the Income Tax Act, 1961. I am of the view that prima facie criteria for invoking Section 147 of the Act within four years from the end of relevant assessment year, has been fulfilled in this case. Furthermore, in the facts and circumstances of the instant case I am of the view that this is not a case which falls in those categories where the impugned proceeding has been initiated by the authority having lack of inherent jurisdiction or there is any procedural infirmity or patent violation of natural justice or issue of Constitutional validity of any statutory provision is involved.

I also find that in this case guidelines and law laid down by the Hon'ble Supreme Court in the case of G.K.N. Driveshafts (India) Ltd. reported in 259 ITR 19 has been fully observed. Further, rejection of the petitioner's objection against the impugned notice under Section 148 of the Act does not mean that it has become a final assessment order and demand has been raised against him. Petitioner will get ample opportunity in course of reassessment proceeding, to make out its case if according to him there is no escapement of income during regular assessment and for dropping the reassessment proceeding against it.

In view of this discussion made above, this writ petition being WPA 4357 of 2022 is dismissed.

(Md. Nizamuddin, J.)