18-04-2022
Item No.18
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.5701 of 2022
MCK PGE Projects LLP
-vs-
Assistant Commissioner of Income Tax Circle 32, Kolkata & Ors.

Mr. Avra Mazumder
Sk. Md. Bilwal Hossain ...for the petitioner

Mr. Amit Sharma ...for the respondents

Heard learned advocates appearing for the respective parties.

Learned advocate appearing for the petitioner files supplementary affidavit which is taken on record. It appears from the said supplementary affidavit that in the instant case no final assessment order has been passed.

In this writ petition, petitioner has challenged the impugned notice under section 148 of the Income Tax, 1961 which was issued after 31st March 2021 with supporting documents on the grounds that this case clearly falls under the newly amended Act relating to proceedings under section 147 of the Act and under which there is a mandatory obligation on the part of the assessing officer to issue notice under section 148A of the Act before issuing any notice under section 148 of the Act and which has admittedly not done by the assessing officer and that the impugned notice under section 148 of the Act has been issued violation of section 148 of the Act.

Furthermore, this case is directly covered by the orders 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 & Ors. reported in (2022) 134 taxman.com 173 (Calcutta).**

Considering the facts, the impugned notice under section 148 of the Act and all subsequent proceedings are quashed. However, quashing of the impugned notice and subsequent proceedings will not debar the assessing officer concerned to issue any fresh notice in future in accordance with law.

With the above observations, this writ petition being **WPA No.5701 of 2022 stands disposed of**.

This writ petition is allowed subject to payment of costs of Rs.5,000/- to the High Court Legal Services Committee, since the impugned notice under section 148 of the Income Tax Act, 1961 has been issued on June 30, 2021 as appears from record and this writ petition has been filed in March 2022, that is, almost after eight months from receipt of the impugned notice, without any explanation for such delay in filing this writ petition. Such costs has to be paid by the petitioner to the High Court Legal Services Committee within seven days from date and such costs is to be utilised by it for the welfare of street children. Receipt of payment is to be produced before this court.

List this writ petition under the heading "To Be Mentioned" on April 28, 2022 for compliance.

[Md. Nizamuddin, J]