20-04-2022
Item No.28
Subrata

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.6461 of 2022
Mr. Aswin Ashra
-vs-
The Assistant Commissioner of Income Tax, Circle 37, Kolkata & Ors.

Mr. Avra Mazumder
Mr. Binayak Gupta ...for the petitioner

Ms. Smita Das De ...for the respondents

Heard learned advocates appearing for the respective parties.

Petitioner in this writ petition has challenged the impugned notice dated March 30, 2021 under section 148 of the Income Tax Act, 1961 relating to the assessment year 2015-16 (Annexure P3, p.25) and subsequent proceedings on the basis of the aforesaid impugned notice on the grounds that the initiation of impugned proceeding under section 147 of the 1961 Act and issuance of notice under section 148 of the Act are bad and not sustainable in law, since the same have been initiated against a dead person who has expired on July 20, 2017 and the death certificate in this regard has been annexed to the writ petition which appears at page 24.

Petitioner submits that in spite of bringing to the notice of the assessing officer about the fact of the death of the noticee by his letter dated March 30, 2021 along with a copy of the death certificate, the assessing officer has proceeded and passed the impugned assessment order.

Ms Das De, learned advocate appearing for the respondents, submits that the fact of death of the noticee was brought to the notice of the authority concerned after issuance of the notice under section 148 of the Act, but she could not deny the fact that the impugned proceeding under section 147 of the Act has been initiated against a deceased person and that it is a settled law that no proceeding can be initiated against a dead person.

Considering the facts and circumstances of this case and what appears from record, this writ petition being **WPA No.6461 of 2022 is disposed of** by quashing the impugned notice under section 148 of the Income Tax Act, 1961 dated March 30, 2021 and all subsequent proceedings on the basis of the impugned notice under section 148 of the Act.

However, quashing of the impugned notice and the proceedings will not prevent the assessing officer concerned from initiating any fresh proceedings in accordance with law.

[Md. Nizamuddin, J]