

29.04.2022.
p.b.
Sl. No.18.

W.P.A. 7331 of 2022

Mr. Dinesh Agarwal

Vs.

The Assistant Commissioner of
Income Tax, Central Circle-3(4),
kolkata & Ors.

Mr. Avra Mazumder,

Mr. K. Roy,

Mr. B. Gupta,

Mr. Sk. Md. Bilwal Hossain.

.....for the petitioner.

Ms. Smita Das De.

.....for the respondents.

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 asked as
to whether final assessment order has already been passed

or not in this case to which he submits that final assessment order has already been passed. He further submits on the basis of record that the impugned notice under section 148 of the 1961 Act, though it bears date and signature of the authority showing that it was signed on March 31, 2021, but it was actually uploaded for communication after 31st March, 2022 which has to be treated as date of issuance of the impugned notice.

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.

This writ petition is allowed subject to payment of costs of Rs.5,000/- to the Calcutta High Court Legal

Services Committee, since the impugned notice under section 148 of the Income Tax Act, 1961 has been issued on 31st March, 2021 as appears from record and this writ petition has been filed in April 2022, that is, almost after ten 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 Calcutta High Court Legal Services Committee within seven days from date which is to be utilised by it for the benefit and welfare of the children staying with their parents in the correctional home in West Bengal. Receipt of payment is to be produced before this court.

With the above observations, WPA No.7331 of 2022 stands disposed of.

List this writ petition under the heading “To Be Mentioned” on May 10, 2022 for compliance.

(Md. Nizamuddin, J.)