16-02-2022
Item No.47
Subrata

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.8699 of 2016
Sri Anuj Agarwal
-vs-
Principal Commissioner of Income Tax, 12 Kolkata & Ors.

Mr. Farhan Gaffar ...for the petitioner

Ms. Sucharita Biswas ...for the respondents

In this writ petition, petitioner has challenged the impugned order under section 264 of the Income Tax Act, 1961 dated March 28, 2016 (Annexure P14, p.120) which arises out of the assessment order dated July 8, 2014 which was an appealable one under the statute.

Petitioner had also the scope to invoke section 263 of the Act for revision of the same or if there was any mistake apparent from record, the petitioner could have invoked section 154 of the 1961 Act. In spite of availability of these three remedies against the assessment order in question, petitioner invoked section 264 of the Act which is not appealable. This court cannot act as an appellate authority over the assessment order in question.

Furthermore, I find the order under section 264 of the said Act which has been invoked by the petitioner himself knowing fully well that is not appealable; and in view of section 264(7), Explanation (1) of the said Act, any order passed by the Commissioner under section 264 of the Act shall not be deemed to be prejudicial to the assessee.

Considering the submission of the petitioner and in view of the discussions made above, this writ petition being WPA No.8699 of 2016 stands dismissed without any order as to costs.

[Md. Nizamuddin, J]