Item No.8.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 01.09.2022

DELIVERED ON:01.09.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE PRASENJIT BISWAS

MAT 1301 of 2022
With
I.A. No.CAN 1 of 2022

Kishore Kumar Mundhra.
Vs.
Union of India & ors.

Appearance:-

Mr. Suthirtha Das ..... for the appellant.

Mr. Soumen Bhattacharya .... for the respondents.

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

1. This intra Court appeal filed by the writ petitioner is directed against the order dated 9th June, 2022 in W.P.A. No.9478 of 2022. The appellant / writ petitioner is aggrieved on account

of not granting an interim order pending disposal of the writ petition. The writ petition had been filed challenging the order dated 22nd April, 2022 under Section 148A(d) of the Income Tax Act, 1961 (for short, "the Act"). The appellant / writ petitioner had challenged the said order on the ground that it is barred by limitation. The learned Single Bench was of the view that the appellant had made out a *prima facie* case for entertaining the writ petition and therefore, directed affidavit-in-opposition to be filed by the department within a time frame and reply to be filed by the appellant / writ petition thereafter.

2. Though such order was passed on 9th June, 2022, the respondents/department is yet to file their affidavit-in-opposition. We find that after the order impugned in the writ petition was passed under Section 148A(d) of the Act, notice under Section 148 has been issued on 22nd April, 2022 as a consequence of which, the assessing officer will proceed with the assessment proceedings, which is sought to be reopened. Taking note of the fact that though the learned Single Bench had granted four weeks time from 9th June, 2022 to file the affidavit-in-opposition, we are informed that till date the affidavit-in-opposition has not been filed and if that be so,

the department would not be justified in proceeding with the reassessment proceeding having not complied with the direction issued by the learned Single Bench.

3. Therefore, we are of the view that the interest of the assessee needs to be protected in the interregnum. Otherwise, the writ petition itself is liable to become infructutous when it is taken up for hearing.

4. In the light of the above, the appeal and the application stand disposed with a direction to the respondents / department to file their affidavit-in-opposition in the writ petition within three weeks from date. The appellant is granted two weeks time therefrom to file reply, if any. Thereafter, the matter shall be listed before the learned Single Bench for hearing, which subject to the convenience of the learned Single Bench shall be listed after eight weeks from date.

5. Till such time, the respondents / department are directed to maintain status quo and not to proceed further pursuant to the notice issued under Section 148 of the Act dated 22nd April, 2022. The appellant cannot raise the plea of limitation merely on the ground that such order has been passed granting interim protection to the appellant till the writ petition is heard and disposed of.

6. However, this will not preclude the appellant from challenging the validity of the order passed under Section 148A(d) of the Act, which is impugned in the writ petition. We make it clear that we have not gone into the merits of the matter and the parties are at liberty to agitate all questions of fact and law before the learned Single Bench.

7. There shall be no order as to costs.

8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(PRASENJIT BISWAS, J.)

NAREN / PALLAB (AR.C)