18-01-2022
Item No.25
Subrata

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.19908 of 2021
Madhu Khaitan
-vs-
Assistant Commissioner of Income Tax Circle – 29, Kolkata & Ors.

Mr. Asim Choudhury
Mr. Soham Sen ...for the petitioner

Mr. Smarajit Roy Chowdhury
Mr. Soumen Bhattacharya ...for the respondents

Mr K.M. Dixit, CIT (Judicial), as directed to personally appear in court by my earlier order January 11, 2022, is present in court and tenders apology by submitting through his counsel that the violation of the order of this court was not deliberate and willful and due to some communication gap this has happened. I accept his apology with caution that in future this type of mistake is not repeated. His further appearance in court is dispensed with.

In this writ petition, petitioner has challenged the impugned action of the income tax authority proceeding under section 147 of the Income Tax Act, 1961 on the basis of a notice dated March 30, 2021 under section 148 of the Act relating to assessment year 2015-16 on the grounds that proceeding of reassessment is without disposing of the objection of the petitioner dated September 30, 2021 being Annexure P11 to the writ petition in violation of the law laid down by the Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO reported in (2003) 259 ITR 19 (SC).

Learned advocate appearing for the income tax authority was given several opportunities to produce the record to show as to whether before proceeding under section 147 of the 1961 Act objection of the petitioner against notice under section 148 of the 1961 Act was considered and disposed of or not to which learned advocate for the respondents, upon instructions, submits that the same was not disposed of before the impugned proceeding under section 147 of the Act and he failed to produce any record in this regard.

Considering the submission of the parties and the facts as appear from record, this writ petition is disposed of by directing the respondent concerned to consider and dispose of the petitioner's objection to the notice under section 148 of the Act dated September 30, 2021 (Annexure P11) before proceeding any further in the matter.

With the above observation and direction, WPA No.19908 of 2021 is disposed of.

[Md. Nizamuddin, J]