WPA 27884 of 2022

19.12.2022
Sl no. 66
Ct no. 2
P.M.

M/s. Poddar Real Estates Pvt. Ltd.
- Vs -
Income Tax Officer, Ward 5(2), Kolkata & Ors.

Mr. Soumitra Chowdhury,
Mr. Avra Mazumder,
Mr. Binayak Gupta,
Mr. Suman Bhowmik
… for the petitioner
Mr. Vipul Kundalia,
Mr. Amit Sharma
… for Income Tax authority.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has made prayer for cancellation of the impugned order dated 2nd December, 2016 passed under Section 144 read with Section 147 of the Income Tax Act, 1961 and subsequent penalty notice issued under Section 271(i) (C) of the Income Tax Act, 1961 and the impugned penalty order dated 23rd June, 2017 relating to the assessment year 2009-2010. What is noticeable in this writ petition is that the impugned assessment order was passed on 2nd December, 2016 and the impugned penalty order was passed on 23rd June, 2017 and the petitioner filed an appeal against the aforesaid impugned penalty order on 26th June, 2017 before the appellate authority which is the basis of the aforesaid impugned order. Curious enough that the petitioner has filed the appeal against the impugned penalty order instead of first filing appeal against the impugned assessment order which is the basis of the penalty order.

Now the petitioner takes the plea that it could not challenged the impugned assessment order since no copy of the same was served upon it.

Petitioner further contends that against the aforesaid impugned assessment order dated 2nd December, 2016 it has made an application on 12th March, 2019 for providing the certified copy of the said assessment order including notices.

Now in December 14, 2022 petitioner has filed this writ petition alleging the impugned penalty order against which it has already chosen to file appeal is bad in law though the said appeal proceedings was initiated by the petitioner itself and which is still pending. So far as the question of challenging the impugned assessment order is concerned, petitioner itself has chosen to file appeal against the penalty order without making an application for certified copy of the impugned assessment order even after knowing from the penalty order that the same is based on that impugned assessment order and even at all it was not served upon him, it sat for two years and in March, 2019, it applied for certified copy of the impugned assessment order and now in the end of the 2022 petitioner is raising this grievance of non-consideration of its application for providing certified copy of the impugned assessment order which according to it is bad in law by contending that it was not served upon on it's new address.

Considering the facts and circumstances of this case as appears from record and conduct of the petitioner firstly I am not inclined to interfere with the impugned penalty order since petitioner itself has chosen to file alternative remedy way of filing appeal which is still pending. Secondly, I am also not inclined to interfere with the impugned assessment order which was passed on December, 2016 against which the petitioner itself has not filed an appeal by taking steps for obtaining certified copy of the same immediately and it applied for certified copy of impugned assessment order in March, 2019 and now in December, 2022 by filing this writ petition petitioner wants me to interfere with the aforesaid impugned order of 2nd December, 2016.

In view of the discussion made above, I find no merit in this writ petition and, accordingly this writ petition being WPA 27884 of 2022 is dismissed.

However, dismissal of this writ petition will not be a bar on the part of the respondent authority concerned to furnish a certified copy of the impugned assessment order, if it has not been furnished on the basis of its application dated 12th March, 2019.

Furthermore, this order will not have any impact on the pending penalty proceeding in question which will be decided on its own merit.

(Md. Nizamuddin, J.)