

OD-44

ORDER SHEET
WPO 1577 of 2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ASHIKA CREDIT CAPITAL LIMITED
Vs
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 31st March, 2022

(Via Video Conference)

Mr. Arun Kumar Upadhyay, Adv.
Mrs. Shobha Upadhyay, Adv.
Mr. Rahul Kinkar Pandey, Adv.
...for the petitioner
Mr. Smarajit Roy Chowdhury, Adv.
...for the respondents

The Court: Heard learned Advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned notice under Section 148 of the Income Tax Act, 1961 dated 30th March, 2021, relating to assessment year 2014-15 on the ground that at the time of issuance of the notice under Section 148, by the assessing officer there was no existence of recorded reasons to believe that there was escapement of any income in the relevant assessment year. It appears from record that on receipt of the impugned aforesaid notice dated 30th March, 2021, petitioner by its letter dated 3rd May, 2021 requested the assessing officer concerned to provide him a copy of the recorded reasons for issuing notice under Section 148 of the Act and initiating the impugned reassessment proceeding under Section

147 of the Act. It appears from record that instead of furnishing the recorded reasons to the petitioner, the assessing officer straight away issued a notice under Section 142(1) read with Section 147 of the Act on 24th June, 2021 wherefrom it appears that for the first time assessing officer has recorded reasons for reopening of assessment while the law requires that at the time of issuing notice under Section 148 of the Act and initiation of proceeding under Section 147 of the Act, assessing officer concerned must have recorded reasons to believe that there was escapement of any income in the relevant assessment year and post facto recording of reasons for reopening of assessment cannot cure this inherent defect and will not regularise or legitimize the issuance of impugned notice or initiation of the impugned reassessment proceeding.

Mr. Roy Chowdhury, learned advocate appearing for the respondents was asked to produce the record to establish that the recorded reasons were existing at the time of issuance of impugned notice under Section 148 and initiation of impugned assessment proceeding under Section 147 of the Act to which Mr. Roy Chowdhury failed and showed his inability to produce any record to show that at the time of issuance of impugned notice under Section 148 and initiation of reopening of assessment proceeding under Section 147 of the Act it was existing and as a consequence this Court has to presume that at the time of issuance of impugned notice under Section 148 of the Act and initiation of impugned reassessment proceeding under Section 147 of the Act, there was no existence of any recorded reasons which is a condition precedent for initiation of

impugned proceeding for reopening of assessment under Section 147 of the Income Tax Act, 1961 and as such the impugned notice is not sustainable in the eye of law and has to be quashed and all subsequent proceedings on the basis of the impugned notice also cannot survive.

Accordingly, the impugned notice dated 30th March, 2021 under Section 148 of the Act and all subsequent proceedings on the basis of the said notice are also quashed. However, quashing of the impugned notice and the subsequent proceeding will not prevent the respondent from initiating any fresh proceeding in future, in accordance with law.

With these observations and findings, this writ petition being WPO 1577 of 2022 stands disposed of without calling for any affidavits since in my view respondent cannot improve its case any further as appears from records.

(MD. NIZAMUDDIN, J.)

