OD – 29

ORDER SHEET
WPO/1802/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

KAILASH KHANDELWAL
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 2ND MAY, 2022.

Appearance:
Mr. Brijesh Kumar Singh, Adv.
..for the petitioner

Mr. Amit Sharma, Adv.
..for the respondents

The Court : Heard learned advocates appearing for the respective parties.

Petitioner in this writ petition is aggrieved by the issuance of impugned notice under Section 148 of the Income Tax Act, 1961 on the grounds that the same is barred by limitation and that the respondent-income tax authority concerned, since before issuing the impugned notices under Section 148 of the 1961 Act, he has not observed the statutory formalities under Section 148A of the 1961 Act as prescribed by the Finance Act, 2021 which are applicable with effect from 1st April, 2021 before issuance of notices under Section 148 of the 1961 Act on or after 1st April, 2021.

Learned Advocate for the respondent was asked as to whether final assessment order has already been passed or not in this case to which he submits that final assessment order has already been passed. He further submits on the basis of record that the impugned notice under Section 148 of the 1961 Act, though it bears date and signature of the authority showing that it was signed on March 31, 2021, but it was actually uploaded for communication on April 1, 2021 at 8.26 a.m, which has to be treated as date of issuance of the impugned notice.

Considering these facts, I am of the considered view that this case clearly falls under the amended Act relating to proceedings under Section 147 of the Act under which issuance of notice under Section 148A of the Act is mandatory before issuing any notice under Section 148 of the amended Act which has not been complied with in this case.

Considering the above facts and circumstances of the case and in view of the order of this Court in the case of **Bagaria Properties and Investment Private Limited & Anr. vs. Union of India & Ors. reported in (2022) 134 taxman.com 196 (Calcutta)** and also in the case of **Monoj Jain vs. Union of India reported in (2022) 134 taxman.com 173 (Calcutta),** the impugned notice under Section 148 of the Act and all subsequent proceedings are not sustainable in law and the same are quashed.

However, quashing of the impugned notice and subsequent proceedings will not debar the respondent-authority concerned to issue any fresh notice in future in accordance with law.

With the above observations, this Writ Petition being **WPO No.1802/2022** stands disposed of.

This writ petition is being entertained subject to payment of cost of Rs. 5000/- to the High Court Legal Services Committee since the impugned notice under Section 148 of the Income Tax Act, 1961, has been issued on 1st April, 2021 as appears from record and this writ petition has been filed in April, 2022, that is, almost after eleven months from receipt of the impugned notices, without any explanation for such delay in filing this writ petition. Such cost has to be paid by the petitioner to the High Court Legal Services Committee within ten days from date and such cost will be utilised for the benefit and welfare of the children staying with their parents in the correctional home in West Bengal. Receipt of payment is to be produced by the petitioner before this Court.

List this matter as “To be Mentioned” on 11th May, 2022 for compliance.

Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)

Sbghosh