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APOT/60/2022
IA No.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RAHUL DHANDHANIA

-Versus-

UNION OF INDIA & ANR.

Appearance:
Ms. Arati Agarwal, Adv.
Ms. Rosy Banerjee, Adv.
. . .for the appellant/assessee.

Mr. Smarajit Roy Chowdhury, Adv.
...for the respondent/revenue.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 17th May, 2022.

The Court : This intra-court appeal filed by the writ petitioner is directed against the order 28th February, 2022 in WPO No.919 of 2022. The appellant had challenged the notice issued under Section 148 of the Income Tax Act, 1961 ('the Act' in brevity) dated 31st March, 2021 by the assessing officer, the second respondent herein. By the said notice the assessing officer proposed to assess/reassess the income/loss for assessment year under consideration i.e., 2014-15 and called upon the assessee to file a return in the prescribed form for the said assessment year within 30 days from the date of service of the notice. Admittedly, the appellant did not file the return in response to such notice but chose to approach this Court by filing the writ petition challenging the said notice. From the material papers we find that the writ petition was affirmed and filed before this Court only on 11th February, 2022. There appears to have been no explanation offered as to why the writ petition was not moved earlier. Be that as it may, when the matter came up for hearing before the learned Single Bench, it was opined that the appellant without making any objection to the notice could not file the writ petition and held the same to be premature.

Being aggrieved by such order, the appellant is before us by way of this appeal.

We have heard Mrs. Arati Agarwal, learned standing counsel assisted by Ms. Rosy Banerjee, learned advocate appearing for the appellant/assessee and Mr. Smrajit Roy Chowdhury, learned counsel appearing for the respondent/revenue.

The learned counsel appearing for the appellant contended that the objection which the appellant had raised in the writ petition questioning the jurisdiction of the assessing officer to issue the notice dated 31st March, 2021 could not have been raised before him on account of the fact that on and after 1st April, 2021, Finance Act, 2021 came into force and the erstwhile provision, namely, Section 148 of the 1961 Act stood repealed and a new provision was inserted, namely, Section 148A of the Act. Therefore, it is submitted that this objection raised by the appellant in the writ petition can be raised only in a writ proceeding and not before the assessing officer. Mr. Roychowdhury, learned counsel appearing for the revenue submitted that in the light of the recent decision of the Hon'ble Supreme Court in the case of *Union of India & Ors. vs. Asish Agarwal* dated 4th May, 2022, all notices issued under the erstwhile Section 148 of the Act stood validated and were held to be deemed to have been issued under Section 148A of the Act as substituted by Finance Act, 2021 and they have to be treated as show cause notices in terms of Section 148A(b).

The learned Advocate appearing for the appellant in reply would submit that the validity of the notices which were considered by the Hon'ble Supreme Court in Asish Agagwal were all issued after 1st April, 2021 and it is only those notices which have been saved and not cases where the notices were issued to the assessee before 1st April, 2021 i.e., 31st March, 2021 as in the case of the appellant. In our considered view, the contention raised by the learned Advocate appearing for the appellant appears to be a reasonable stand as such legal issue cannot be adjudicated by the assessing officer and, therefore, the appellant was justified in approaching the writ Court. In fact, we are of the view that the writ petition should be heard out and decided on merits. We have also taken note of the decision relied upon by the learned Advocate appearing for the appellant in the case of *Kolhapur Canesugar Works Ltd. vs. Union of India* reported 2000(2) SCC 536 with regard to the effect of the repeal/deletion of the erstwhile Section 148 of the Act. However, we take note of a subsequent development which had taken place after the learned writ Court had dismissed the writ petition as premature by order dated 28th February, 29022, namely, that the assessing officer has completed the exercise and passed the assessment order on 30th March, 2022. Therefore, the question would be as to what is the relief the appellant would be entitled to at this stage. Mr. Roychowdhury, learned standing counsel, would submit that such assessment order is an appealable order and, therefore, the assessee has to file the appeal. Learned counsel for the appellant would submit that the appellate remedy is not an efficacious remedy. The Income Tax Act is a complete Code by itself and the appellate remedy provided under the Act confers very wide powers on the appellate authority and such powers are co-terminus with that of the powers of the assessing officer. Therefore, in our view, the appellant should not be permitted to bypass an appellate remedy and such appellate remedy is not only an effective remedy but also an efficacious remedy wherein the appellate authority can consider questions of law as well as facts. Therefore, we are of the view that the appellant should prefer an appeal before the Commissioner of Income Tax (Appeals) against the order dated 30th March, 2021. However, we would make it clear that the appellant shall be entitled to canvas the very assumption of jurisdiction by the assessing officer by invoking Section 148 of the erstwhile Act and such issue should be decided by the Commissioner as first amongst several issues which may be raised before him in the appeal.

For all the above reasons, the intra-court appeal is allowed. The order passed in the writ petition is set aside and the writ petition stands disposed of by directing the appellant to prefer appeal before the CIT(A) and if such appeal is filed within 30 days from the date of receipt of the server copy of the order, the appellate authority shall take up the appeal for consideration on merits and not reject the same on the ground of limitation. As observed, the appellant would be entitled to canvas the legal issue as regards the assumption of jurisdiction by the assessing officer in issuing the notice dated 31st March, 2021 and the appellate authority shall decide the said question, which being a pure question of law, as first amongst several issues that may be raised before him.

For all the above reasons, the appeal is allowed to the extent indicated above and the writ petition also stands disposed of.

In the result, the connected application for stay (IA No.GA/1/2022) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As/S.Das