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ORDER SHEET

WPO 1550 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MUKUL BAGLA
Vs.
UNION OF INDIA AND ORS

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 10th January, 2022

(Via Video Conference)

Mr. Pranit Bag, Adv.
... for the Petitioner
Ms. Sucharita Biswas, Adv.
...for the respondents

The Court: Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned notice dated 30th March, 2021 under Section 148 of the Income Tax Act, 1961 relating to assessment year 2014-15 and all further notices on the basis of the aforesaid notice dated 30th March, 2021 on the ground that the impugned notice has been issued in the name of a dead person who has already expired on 22nd September, 2014 and the respondent Income Tax Department is also aware of this fact which would be established by the order of the CIT (Appeal) dated 30th December, 2018 where the noticee Jugal Kishore Modi has been described as "late" and not only that, petitioner has filed objection by its letter dated 19th August, 2021 being annexure P-7 to the writ petition specifically pointing out this fact of death of the noticee which was not considered by the respondent. Notice in any proceeding is the foundation of a proceeding and if it is bad, all subsequent steps will also not sustain. Here in this case admittedly the impugned notice under Section 148 has been issued in the name of a dead person which is not sustainable in the eye of law.

Ms. Sucharita Biswas, learned advocate appearing on behalf of the department is not in a position to contradict the allegations which is supported by sufficient document by way of annexure to the writ petition and this admitted fact cannot be improved by any affidavit and as such keeping this writ petition pending and calling for affidavits will be a futile exercise.

Considering the submissions of the parties, this writ petition being WPO 1550 of 2021 is disposed of by quashing the impugned notice dated 30th March, 2021 relating to assessment year 2014-15 under Section 148 and all subsequent notices and order on the basis of the impugned notice under Section 148 of the Income Tax Act, 1961.

However, disposal of this writ petition will not prevent the respondent Income Tax Authority to proceed afresh in the matter in accordance with law.

(MD. NIZAMUDDIN, J.)

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