OD – 3

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/138/2022
IA NO:GA/1/2022, GA/2/2022

JAGDISH PRASAD KASAT
VS.
UNION OF INDIA & ORS.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE PRASENJIT BISWAS
Date : SEPTEMBER 2, 2022.

Appearance:
Mr. Indranil Banerjee, Adv.
Mr. Rites Goel, Adv.
...for appellant.

Mr. Prithu Dudhoria, Adv.
... for Respondents

The Court : We have heard Mr. Indranil Banerjee, learned Counsel appearing for the appellant and Mr. Prithu Dudhoria, learned Counsel appearing for the respondent.

There is a delay of 91 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay and we find sufficient causes have been shown for not being able to prefer the appeal within the period of limitation. Accordingly, the delay in filing the appeal is condoned and the application for condonation of delay being GA 1 of 2022 stands allowed.

This intra-court appeal is directed against the order dated 29th March, 2022 in WPO 1731 of 2022. The said writ petition was filed by the appellant challenging a notice issued under Section 148 of the Income Tax Act, 1961 on 13th April, 2021 relating to the assessment year 2014-15.

The first ground urged before the Learned Single Bench was that the notice issued in the name of a dead person is void ab initio. The second ground which was urged is that in terms of the decision of the Hon'ble Supreme Court in *Union of India vs. Ashish Agarwal, (2022) 138 taxmann.com 64 (SC)*, a notice issued under Section 148 prior to the amendment, all stand validated and is deemed to have been issued under the new law and the authorities were directed to proceed in terms of the amended Section 148A of the Act.

Learned Counsel appearing for the appellant placed reliance on the decisions in *Urmilaben Anirudhasinhji Jadeja vs. Income-tax Officer, (2020) 117 taxmann.com 504 (Gujarat)*; *Income Tax Officer Ward 1(3)(7), Surat vs. Durlabhbhai Kanubhai Rajpara, (2020) 114 taxmann.com 482 (SC); Amaelu Veerappan vs. Income Tax Officer, Non-corporate Ward-2(2), Chennai, (2018) 95 taxmann.com 155 (Madras); Krishnaawtar Kabra vs. Income-tax Officer, (2022) 140 taxmann.com 423 (Gujarat); Davinder Singh Thapar vs. Assistant Commissioner of Income-tax, (2022) 141 taxmann.com 4 (Delhi); Rupa Shyamsundar Dhumatkar vs. Assistant Commissioner of Income Tax, (2020) 120* *taxmann.com 323 (Bombay); Savita Kapila vs. Assistant Commissioner of Income-tax, Circle 4(1), (2020) 118 taxmann.com 46 (Delhi).*

Furthermore, the learned Counsel has relied upon the decision in *Principal Commissioner of Income Tax (Central) –1, Kolkata vs. Vijay Kumar Agarwal, ITAT/23/2021, dated 27th June, 2022*, which related to a penalty proceedings against a dead person and the order impugned in the said appeal was passed by the Tribunal affirming the order passed by the Commissioner of Income Tax (Appeals) interfering with such an order of penalty passed against a dead person. The said order of the Tribunal was affirmed by this Court in its judgment dated 27th June, 2022.

From the aforementioned decision, it is clear that the settled position of law is that a notice under Section 148 issued upon a deceased assessee was void ab initio. Therefore, the notice issued on 13th April, 2021, which was impugned in the writ petition, has to be necessarily set aside.

It appears that pursuant to such notice an order of assessment dated 25th March, 2022 had been passed against a dead person. Therefore, not only the notice issued under Section 148 of the Act on 13th April, 2021 but also the assessment order dated 25th March, 2022 are liable to be set aside. However, the respondent department should be granted liberty to proceed in accordance with the amended provisions namely, Section 148A of the Act, by proceeding against the legal representative of the deceased assessee, who had in fact submitted the legal heir certificate and other documents when the assessment was taken up which ultimately culminated in the assessment order dated 25th March, 2022.

For the above reasons, the appeal is allowed and the order passed in the writ petition is set aside.

Consequently, the notice issued under Section 148 on 13th April, 2021 on a dead person and the consequential assessment order dated 25th March, 2022 are set aside and the matter is remanded to the Assessing Officer to proceed in accordance with law in terms of the amended provision.

The stay application being GA 2 of 2022 stands closed.

(T.S. SIVAGNANAM, J.)

(PRASENJIT BISWAS, J.)

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