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ORDER SHEET
WPO/2458/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ASHIANA HOUSING LIMITED
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 6th September, 2022.

Appearance:
Mr. Pratyush Jhunjhunwala, Adv.
Mr. S. Rudra, Adv.
Mr. R. Raju, Adv.
...For the Petitioner

Mr. Vipul Kundalia, Adv.
Mr. Amit Sharma, Adv.
...For the Respondents

The Court: Heard learned Advocates appearing for the parties.

Affidavit of service filed in Court be kept with the record.

By this writ petition, petitioner has challenged the legality of the impugned order under Section 148A(d) of the Income Tax Act, 1961 dated 28th July, 2022, relating to the assessment year 2015-2016 and considering the submission of the parties and on perusal of the aforesaid impugned order, I find that the same is neither in violation of principles of natural justice nor in contrary to any provision of the Income Tax Act nor there is any procedural irregularity nor any constitutional validity of any provision of statute is involved in this writ petition.

Further on perusal of the aforesaid impugned order and particularly recording of the findings by the assessing officer I am not inclined to entertain this writ petition particularly in view of the following findings recorded by the assessing officer in its impugned order which are quoted as hereunder :

"The Hon'ble Supreme Court in its order as referred earlier, instructed to follow the procedure as per the new provisions of section 148A in a case where notice u/s 148 was issued post 31.03.2021 following old provisions. From that observation of the Hon'ble Court it can be inferred that while considering the scope of escaped income in this case as on date. AO should not limit its scope within the definition of "Assets" only but also to consider the scope of definition of "Expenditure" and Entry in the books of account" as per section 149(1)(b) as it is on this date.

The submission of the assessee company in respect of the payment of M/s Culminating Projects Pvt. Ltd. has been perused. It is observed that the Director of M/s Culminating Projects Pvt. Ltd., Shri Kamal Jain has admitted in its statement that he is engaged in providing bogus bills as requested by party. Therefore, the contention of the assessee to drop the proceedings not appears to be in order.

Considering the nature of transaction of the instant case, there is possession of other documents or evidence which reveal that the income chargeable to tax, bogus bills of Rs. 90,00,000/- resulted in fictitious decrease in income of the assessee. Which effects the asset of the assessee company.

It is also bring on record that the assessee company has made transaction Rs. 90,00,000/- from aforesaid parties, which is bogus in nature. Hence, the amount received during the F.Y. 2014-15 relevant to A.Y. 2015-16 is nothing but assessee's own unaccounted money taken by routing through banking channel.

Alternatively, it is an accommodation entry in the books of account and so it comes under the provision of section 149(1)(b) as it is on this date. Therefore, entry of Rs. 90,00,000/- is considered as income chargeable to tax has escaped assessment for the AY 2015-16.

Hon'ble Pubjab & Haryana High Court [CPW No. 8751 of 2022 (O & M)] in its judgement dated 02.06.2022 has opined that "Order u/s. 148A(d) is just the beginning of assessment and not the final state of assessment and any further argument/contention of assessee as well as assessing officer will be placed at the time of assessment proceedings."

In view of the above, I am of the considered opinion that this is a fit case for issue notice u/s 148 for reopening of the proceedings of assessment under section 147 of the Income Tax Act 1961. Therefore, order u/s 148A(d) is passed with prior approval of the Ld. PCCIT, W.B & Sikkim."

Furthermore passing an order under Section 148A(d) is not itself an assessment or a demand and the assessee will have still ample opportunity and scope in the proceeding after issuance of notice under Section 148 of the Act to make out a case for dropping of the proceeding under Section 147 of the Act.

In view of the discussion made above, this writ petition being WPO 2458 of 2022 is dismissed.

However, dismissal of this writ petition will not be a bar for the petitioner to raise any point of this writ petition, before the assessing officer in course of impugned reassessment proceeding.

(MD. NIZAMUDDIN, J.)

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