22.11.2023
PB
Sl. No.2.

WPA 2116 of 2023
With
CAN 3 of 2023

Emami Reality Limited
Vs
Assessment Unit, Income Tax Department & Ors.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Abhrotosh Majumder, Sr. Adv.
Mr. Avra Mazumder,
Mr. Ramesh Kr. Patodia,
Mr. Pratyush Jhunjhunwala,
Ms. Megha Agarwal,
Mr. Kausheyo Roy.
... For the Petitioner.
Mr. Om Narayan Rai,
Mr. Amit Sharma.
.......for the respondents.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned assessment order dated 31st December, 2022 under Section 143(3) read with Section 144B of the Income Tax Act, 1961, on several grounds including the jurisdiction of the Assessing Officer in passing the order for intimating other agencies the information which came to his knowledge in course of the impugned assessment order. By the order of this Court dated 10th February, 2023, this writ petition was admitted and interim order was passed restraining the Assessing Officer from intimating the materials against the petitioner which came to its knowledge in course of the impugned assessment proceeding to other agencies and this Court had clarified that only on this issue the writ petition will be heard and not on any other issues in challenging the impugned assessment order. During the pendency of this writ petition, respondent Assessing Officer was granted liberty to proceed with the penalty proceeding subsequent to the impugned assessment order relating to the assessment year 2021-22 and during the pendency of the writ petition final penalty order has also been passed on 30th June, 2023. Both the impugned assessment order and penalty order are appellable before the appellate authority under the statute and since this Court had specifically clarified that only on the issue indicated hereinabove, this writ petition will be heard and not on the merit of the assessment itself, I am inclined to grant liberty to the petitioner to file appeal against the impugned assessment order as well as subsequent penalty order before the appellate authority concerned within 15 days from date and if such appeals are filed within the time stipulated herein, the same shall be considered and disposed of on merit and in accordance with law without raising the point of limitation. Respondent income tax authorities concerned shall not take any coercive action for recovery of the demand arising out of the impugned assessment order and subsequent penalty order for a period of four weeks from date if petitioner files appeals within the time stipulated herein. Petitioner shall be at liberty to make appropriate application for any interim relief in accordance with law before the appellate authority against the demand in question arising out of the impugned assessment order. Since petitioner could not file any appeal against the impugned assessment order after filing this writ petition and in the meantime, penalty order has been passed, any realization of amount arising out of the penalty order will depend upon the final order in the appeal to be filed. It is clarified that the appellate authority shall consider the application for any interim relief against the demand arising out of the impugned assessment order on its own merit and in accordance with law without being influenced by any observation in this order.

So far as the part of the impugned assessment order involving information to the other agencies by the Assessing Officer is concerned, I am of the view on reading Section 138 of the Income Tax Act along with the order of the CBDT dated 21st July, 2020 (File No.225/53/2020/ITA.II) that the Assessing Officer is not authorized under the law to take such action and accordingly part of the impugned assessment order relating to the action of intimation to the information to the other agencies is concerned, the same is quashed.

The respondent authorities concerned shall open the official portal within 48 hours from the date of communication of this order to enable the petitioner to file the appeals pursuant to this order of this Court. The appellate authority is requested to expedite the appeals to be filed. If petitioner fails to file the appeals and application for interim relief within the time stipulated herein, the interim protection granted in this order shall have not any force.

With this observation and direction, this writ petition being WPA 2116 of 2023 and the application being CAN 3 of 2023 are disposed of.

(Md. Nizamuddin, J.)