WPA 10666 OF 2023

18.07.2023
Sl no. 4
Ct no. 2
P.M.

SN Towers Private Limited.
- Vs -
Income Tax Officer Ward No. 10(2), Kolkata & Ors.

Mr. Avra Mazumder,
Mr. Kausheyo Roy,
Mr. Suman Bhoumik,
... for the petitioner

Mr. Aryak Dutt
... for respondent No. 1.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has challenged the impugned order under Section 148A(d) of the Income Tax Act, 1961 dated 23rd July, 2022 relating to assessment year 2013-2014 and subsequent final assessment order under Section 147 of the Act which was passed during the pendency of this writ petition by way of filing supplementary affidavit which may be kept with the record.

Mr. Mazumder, learned advocate appearing for the petitioner submits that though final assessment order under Section 147 of the Act has been passed which is an appellable order but there is a procedural irregularity in issuing notice under Section 148 of the Act by issuing the same by the jurisdictional assessing officer instead of by faceless mod and that issuance of such notice by jurisdictional assessing officer is contrary to the notification of the Board dated 29th March, 2022 according to him.

Though the impugned notice under Section 148 of the Act has been issued in the manner contrary to the aforesaid notification of the CBDT but the admitted fact which cannot be ignored that the impugned order under Section 148A(d) of the Act has been culminated into final assessment order under Section 147 of the Act by observing procedure like issuance of notice under Section 142(1) and 143(2) of the Act.

I am of the considered view that simply manner or mod of issuance of a notice contrary to a notification by the Board is not a statutory provision violation and is a mere technical infraction of law and such irregularity in mod and manner of service of a notice does not affect the merit of the assessment itself or causing serious prejudice or injustice to the assessee/petitioner and furthermore, since the final assessment order under Section 147 of the Act has already been passed which is an appealable order, I am not inclined to entertain this writ petition.

The unreported decision of this Court dated 22nd June, 2023 in WPO 1232 of 2023 (Excel Stock Broking Private Limited – Vs – Union of India & Ors.) upon which Mr. Mazumder has relied is not applicable to the facts of this case since in the said case at the time of passing the order by this Court final assessment order under Section 147 of the Act was not passed and the matter was still pending at the stage of 148A(d) and 148 of the Act.

In view of the discussion made above, no relief can be granted to the petitioner in this writ petition except granting extension of time to file appeal for a period of two weeks from date and liberty to the petitioner to raise all the points in course of appeal to be filed before the Appellate authority which has been raised in this writ petition.

With this observation and direction this writ petition being WPA 10666 of 2023 stands disposed of.

(Md. Nizamuddin, J.)