WPA 12396 Of 2023

03.07.2023
Sl no. 11
Ct no. 2
P.M.

Majumdar Global IP
- Vs -
Union of India & Ors.

Mr. Abhrotosh Majumdar. Sr. Adv.
Mr. Paritosh Sinha,
Mr. Abhra Majumdar,
Mr. Amitava Mitra,
Mr. Subhadeep Banerjee
... for the petitioner

Mr. Tilak Mitra
... for the respondents.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has challenged the impugned order dated 24th April, 2023 under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2016-2017 based on the notice to show-cause dated 25th March, 2023 under Section 148A(b) of the Act.

I have perused the aforesaid order under Section 148A(d) of the Act which has been passed after considering the objection/response filed by the petitioner against the aforesaid notice under Section 148A(b) of the Act and after giving opportunity of personal hearing to the petitioner and on perusal of the same I find that the impugned order containing elaborate reason and discussion both on facts and law.

Mr. Majumdar, learned senior advocate contends that the aforesaid impugned order under Section 148A(d) of the Act has been passed by the Assessing Officer concerned by reaching to a different conclusion after considering the objection of the petitioner but he could not establish before this Court by his argument and submission that the aforesaid impugned order was passed by an authority having any inherent lack of jurisdiction or that the order has been passed in violation of principle of natural justice by not giving any opportunity of hearing to the petitioner or that there was any procedural irregularity in passing the aforesaid impugned order under Section 148A(d) of the Act or that the objection of the petitioner has not been considered or dealt with or that the impugned order is a non-speaking order.

Whole argument of Mr. Majumdar, in challenging the aforesaid impugned order under Section 148A(d) of the Act revolves around the merits of the aforesaid impugned order as to whether payment made by the petitioner to the foreign attorney firms in course of carrying out profession in India by the petitioner is liable for TDS under Section 195 of the Income Tax Act, 1961 or not? I am of the considered view that in exercise of constitutional writ jurisdiction under Article 226 of the Constitution of India, this Court cannot act at this stage of passing the impugned order under Section 148A(d) of the Act which is neither any final assessment order nor a final conclusion on the aforesaid issues by the assessing officer nor any demand arises of it, cannot finally adjudicate and declare as to whether nature of payment in question is liable for TDS or not? This Court cannot exercise its jurisdiction interfere with the impugned order under Section 148A(d) of the Act unless an order under Section 148A(d) of the Act itself is passed by an authority having no jurisdiction or such order is passed in violation of principle of natural justice or by committing any procedural irregularity in course of passing the order under Section 148A(d) of the Act which factors are absent in this case.

It is well settled principle of law that alternative remedy is not always a bar but each case has got its own sets of fact and in the facts and circumstances of the instant case, in addition to fulfillment of criteria laid down by this Court in entertaining the writ petition as discussed above, the important factual and legal position which cannot be ignored is that the impugned order under Section 148A(d) of the Act is neither a final assessment order nor any findings therein is final and the same are subject to final conclusion and assessment under Section 147 of the Act after following procedure like a regular assessment proceeding and the petitioner will be given full opportunity to make out any case, if it has for dropping the reassessment proceeding.

Petitioner could not satisfy this Court the criteria laid down by this Court for entertaining the writ petition and for this reason this writ petition is being dismissed and not for the sole reason that the petitioner still has remedy in proceeding subsequent to the order under Section 148A(d) of the Act.

Needless to mention that the findings and conclusion arrived at by the Assessing officer in its order under Section 148A(d) shall not be treated as final for the purpose of the assessment order under Section 147 of the Act and the assessee petitioner shall be given full opportunity to make out its case with all the supporting documents relating to the transactions involved as referred by the Assessing

Officer in his impugned order under Section 148A(d) of the Act.

In view of the reasons, discussion and observation made above, this writ petition being WPA 12396 of 2023 stands dismissed.

(Md. Nizamuddin, J.)