11.08.2023
Item No.11
gd/ssd

MAT/1111/2023
IA NO: CAN/1/2023
NIKUNJ DROLIA
VS
INCOME TAX OFFICER, WARD-30(1),
KOLKATA AND ORS.

Ms. Akshara Shukla
..for the Appellant.

Ms. Smita Das De
..for the Respondent.

1. This intra court appeal is directed against the order passed by the learned Single Bench dated 5th June, 2023 in WPA 9158 of 2023.

2. The appellant had challenged the reopening of the assessment for the assessment year 2017 under the provisions of the Income Tax Act, 1961.

3. The learned Single Bench had taken note of the facts and circumstances and in particular that an assessment order has already been passed under Section 147 of the Act and declined to entertain the writ petition.

4. We have elaborately heard the learned advocate for the appellant who strenuously contends that the substantial objection which was raised by the assessee in his reply dated 02.03.2022 in response with the notice issued under Section 148A(b) of the Act was not considered and none of the facts were dealt with by the assessing officer while passing the order dated

23.07.2022 under Section 148A(b) of the Act. Therefore, it is submitted that the matter should be remanded back to the assessing officer to consider the reply given by the assessee in a proper perspective.

5. As could be seen from the reply to the show cause notice the assessee has not only mentioned about the absence of evidence being provided, the assessee has also furnished information to state that the proposal to reopen the assessment was incorrect assessment of facts and this aspect has been dealt with by the assessing officer and more particularly, while passing the assessment order under Section 147 of the Act dated 29.05.2023. Thus, the matter has travelled to the stage of assessment order and necessarily the assessee has to establish his case by placing facts before the appellate authority and at this juncture the question of interfering with the order passed under Section 148A(d) of the Act would not arise.

6. For the above reason, the order passed in the writ petition is confirmed and the appeal is dismissed.

7. However, we make it clear that the dismissal of the appeal and the writ petition will not preclude the appellant from raising all grounds in the statutory appeal to be filed against the assessment order dated 29.05.2023 in which the appellant would be entitled to contest that the reopening of the

assessment itself is bad in law. All such contentions shall be decided by the appellate authority uninfluenced by any observation made by the learned writ court or by this court in this judgment and order.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)