12 17.10.2023
Ct. No. 01
AN

MAT 1292 of 2023
(CAN 1 of 2023)
Siddharth Lakhotia
Vs.
Union of India & ors.

Mr. Ejaz Khan
Mr. Dibyanshu Das
Ms. Ananya Adhikary
... for the appellant

Mr. Amit Sharma
... for the respondents

1. This intra-Court appeal is directed against the order dated 19.06.2023 passed in WPA 12104 of 2023. In the said writ petition the appellant had challenged the notice dated 27.07.2022 issued under Section 148 of the Income Tax Act, 1961 primarily on the ground that the proceedings are wholly without jurisdiction since notice under Section 143(2) of the said Act was not issued.

2. The appellant would contend that this is a procedural irregularity but it is a jurisdictional error and, therefore, the entire assessment is bad in law. When the writ petition came up for hearing, by then the assessment order has already been passed under Section 147 of the Act. Learned Single Judge accepted the case of the appellant to a limited extent and set aside the re-assessment order and remitted the matter to the Assessing Officer to issue a fresh notice under Section 143(2) of the Act. During the pendency of the appeal, the authority has proceeded in terms of the order of remand and an order has been passed under Section 147 read with Section 260 of the Act dated

13.09.2020. In the light of the above, we are of the view that the appellant should challenge the assessment order dated 13.09.2023 before the appellate authority.

3. Learned counsel for the appellant would contend that even at the first instance, the appellant had raised jurisdictional issue which was not rejected by the learned writ court. We are inclined to accept the submissions of the learned counsel appearing for the appellant while directing the appellant to avail the appellate remedy provided under the Act. We grant liberty to raise the issue with regard to the jurisdiction to reopen the assessment proceedings on account of failure to issue notice under Section 143(2) of the Act. The appellant would be entitled to canvas as to the mandatory nature of the procedure to be followed before the appellate authority and if the appellant files the appeal and raises such question, the appellate authority shall consider the same as first amongst several issues and pass a reasoned order on merits and in accordance with law.

4. Accordingly, the appeal stands **disposed of** with the above observations and the appellant is granted 60 days time from the date of receipt of the server copy of this order to file a statutory appeal before the appellate authority and the appeal shall be decided in the manner indicated hereinabove.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)