17.10.2023
Item Nos.15
RP/AN
Ct. No.1

MAT 1345 of 2023
+
IA No.CAN 1 of 2023
Arjit Pal
Vs.
Union of India & Ors.

Ms. Namrata Jha
.....for the Appellant

Mr. Aryak Dutt
.....for the respondent no.2

1. This intra-Court appeal is directed against the order dated 6th July, 2023 passed in WPA 15360 of 2023. In the writ petition the appellant had challenged the order dated 5th July, 2022 passed under Section 148A(d) of the Income Tax Act, 1961 for the assessment year 2017-2018 and the writ petition was filed after a year after the proceeding has also been completed. Therefore, the learned Single Bench was rightly directed the appellant to file a statutory appeal.
2. We find no error in the order passed by the learned Single Bench. We take note of the submission made by the learned advocate appearing for the appellant that notice for re-assessment has been issued beyond three years from the end of the relevant assessment order and as per the provisions of Section 141 of the Income Tax Act the specified authority for the purpose of Section 148 and 148A

shall be the Principal Chief Commissioner or Principle Director General or where there is no Principle Chief Commissioner or Principle Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year. In that regard the learned advocate for the appellant has referred to Section 152 of the Act. She submitted that in the instant case approval was given by the Principal Commissioner of Income Tax and order under Section 148 has been passed without taking approval from the appropriate authority. Therefore, the entire re-assessment proceeding is vitiated. Learned advocate for the appellant has referred to the decision of this Court in the case of K.K. Agarwal & Sons HUF vs. ITO & Ors. being WPA No.25770 of 2022 dated 14th December, 2022 and in the case of Consolidated Infracon Private Limited vs. Union of India & Ors. being WPO 2390 of 2022 dated 11th April, 2023. Further, it is contended that there no case for reopening of the assessment as there was no material on record indicting escapement of income tax. As already pointed out, inordinate delay in filing the writ petition and that too much after the re-assessment proceeding, would preclude us from interfering with the matter at this stage. However, since the question of jurisdiction has been raised by the appellant, we grant liberty to the appellant to raise such question before the Appellate Authority and the Appellate Authority shall consider the same first amongst other issues and pass a reasoned order. Time granted by the learned Single Bench for filing the statutory appeal before the Appellate Authority is extended by a period of 20 days from the date of receipt of the server copy of this order.

3. With the above observations and directions, the appeal and the connected application are disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)