31.01.2023
ss

W.P.A. 16340 of 2015

Price Waterhouse & anr.
Vs.
Commissioner of Income Tax, Kolkata-8 & anr.

Mr. J. P. Khaitan
Mr. Akhilesh Kr. Gupta
Mr. Asim Choudhury
Mr. Soham Sen
... for the petitioners

Mr. S. Roychowdhury
... for the respondents

Heard learned Counsel for the parties.

This application under Article 226 of the Constitution of India has been filed questioning the propriety of the Assessing Officer referring a matter for computation of the arm's length price to the Transfer Pricing Officer (TPO) without giving any opportunity to the assessee.

Mr. J. P. Khaitan, learned Senior Advocate appearing on behalf of the petitioners has relied on the assessee's own case in **Pricewater House and another Vs. Commissioner of Income Tax, Kolkata-XIX** (**APO 36 of 2017** arising out of **WP 733 of 2014)** to buttress his argument.

In light of the same, the Assessing Officer is directed to afford an opportunity of being heard with regard to the issue as to whether there is international transaction for the Assessment Year concerned.

Upon considering the assessee's objection, if any, in such regard, if the Assessing Officer is of the opinion that there was indeed an international transaction or a specified domestic transaction within the meaning of the relevant expressions in Chapter-X of the Act in course of the relevant assessment year, the Assessing Officer may refer the matter to the appropriate TPO upon obtaining the previous consent of the Commissioner or Principal Commissioner.

It is recorded that the writ petitioners have fairly submitted that the ground of limitation will not be urged by the writ petitioner while the Assessing Officer embarks on the exercise of ascertaining the facts in accordance with the directions contained in the order impugned.

In such circumstances, the order of reference under Section 92CA(1) of the Income Tax Act, 1961 made by the respondent no.3 to the respondent no.5 for the Assessment Year 2012-13 as also the approval of the respondent no.1 in that regard are set aside. The petitioners will be provided with the reasons on the basis of which reference under Section 92CA(1) of the Income Tax Act, 1961 is proposed for the Assessment Year 2012-13 in oral representations and the respondent nos.1 and 3 will thereafter decide the matter in accordance with law.

With the above observations, this writ petition being W.P.A. 16340 of 2015 is disposed of.

All parties are to act on website copy of this order.

(Shekhar B. Saraf, J.)