OD 504

ORDER SHEET

WPO 438 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

R.B. JEWELLERS PRIVATE LIMITED
Vs.
UNION OF INDIA AND ANR.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 28th November, 2023.

Mr. Avratosh Mazumdar, Sr. Adv.
Mr. Avra Mazumdar, Adv.
Mr. Atish Ghosh,
Ms. Antara Dey, Advs.
...for the petitioner
Mr. Prithu Dudhoria, Adv.
...for the respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned initiation of assessment proceeding under Section 153A of the Income Tax Act, 1961 and the notice under Section 142(1) issued in course of aforesaid impugned proceeding relating to assessment year 2010-11 mainly on two grounds; firstly that the criteria for initiating proceeding under Section 153A of the Act has not been fulfilled since no incriminating document or materials have been found in course of search and seizure and secondly on the ground that the impugned assessment proceeding relating to assessment year 2010-11 is barred by limitation on the basis of search and seizure held on 13th April, 2019

Mr. Mazumdar, learned senior advocate for the petitioner in support of his contention challenging the initiation of the impugned assessment order by contending that no incriminating documents/materials were found in course of search and seizure in question, has relied on a decision of the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax vs. Abhisar Buildwell P. Ltd. reported in (2023) 454 ITR 212W(SC).

The respondents have filed affidavit-in-opposition and on perusal of which I find that there is no specific denial against the aforesaid allegation of the petitioner that no incriminating documents/materials were found by the Authority against the petitioner in course of search and seizure in question rather respondents Income Tax Authority concerned justifies its action by relying on the documents and materials which were already available before it, much before conducting search and seizure in question.

So far as the ground of challenge by the petitioner that the impugned assessment proceeding is barred by limitation, Mr. Mazumder has relied on a judgment of the Hon'ble Madras High Court dated 24th March, 2021 in the case of A.R. Safiullah vs. The Assistant Commissioner of Income Tax, Central Circle-1, Trichy reported in 2021(6) TMI 867, the respondent has taken a stand in their affidavit-in-opposition that it has not accepted the said decision of the Hon'ble Madras High Court and it intends to challenge the same by filing

Special Leave Petition but till date it has not filed any Special Leave Petition against the said judgment.

Mr. Dudhoria, learned advocate representing the respondent Income Tax Authority could not satisfy with his submission or from record that any incriminating documents or materials were found against the petitioner in course of search and seizure in question or that the impugned assessment proceeding has been initiated before the expiry of limitation as provided under Section 153A explanation 1 of the Income Tax Act, 1961 and he also could not distinguish both the aforesaid judgments upon which Mr. Mazumder has relied either on facts or law.

Considering the facts and circumstances of the case as appears from record and submission of the parties and the judgments relied upon by them, I am of the considered view that the impugned proceeding under Section 153A of the Act and all subsequent proceedings relating to assessment year 2010-11 on the basis of search and seizure dated 13th April, 2019 is not sustainable in law and accordingly the same were quashed.

With these observations and directions, this writ petition being WPO 438 of 2021 is disposed of.

(MD. NIZAMUDDIN, J.)

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