OD – 29 & 30

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/94/2023
IA No.GA/1/2023

NAVDISHA REAL ESTATE PRIVATE LIMITED
-Versus-

UNION OF INDIA AND ORS.

APOT/95/2023
IA No.GA/1/2023

NAVDISHA REAL ESTATE PRIVATE LIMITED
-Versus-

UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 26th April, 2023

Appearance :
Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Samit Rudra, Adv.
...for the appellant

Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.
...for the respondent.

The Court : We have heard Mr. Abhratos Majumdar, learned senior counsel assisted by Mr. Pratyush Jhunjhunwala and Mr. Samit Rudra, learned advocates for the appellant and Mr. Vipul Kundalia, leaned standing counsel assisted Mr. Anurag Roy, learned Advocate for the respondent.

The appellant is aggrieved by the order of the learned single Bench not granting interim order though the writ petition was admitted. The writ petition questions the correctness of the reopening proceedings pursuant to an order passed under Section 148A(d) of the Income Tax Act, 1961 (the 'Act' in short). The learned Single Judge was of the view that since the ground of limitation has been challenged, he was convinced that the writ petition should be entertained. So far as the prayer for interim order is concerned, the same has been declined.

Learned senior advocate appearing for the appellant had placed reliance on the decision of the High Court of Gujarat at Ahmedabad in the case of *Keenara Industries Pvt. Ltd. vs. The Income Tax Officer, Ward 1(3)(3), Surat* in R/Special Civil Application No.17321 of 2022 etc. dated 7th February, 2023 which had quashed the re-assessment proceedings on the ground of limitation. It is submitted that as against the said order passed by the High Court of Gujarat no appeal had been preferred. The appellant also placed reliance on the decision of the High Court of Judicature at Allahabad in WT No.1086 of 2022 dated 22nd February, 2023 and by the said judgment, the re-assessment proceedings were quashed.

It is submitted by the learned counsel for the respondent that the decision of the High Court of Judicature at Allahabad in the case of *Rajeev Bansal* has been stayed by the

Hon’ble Supreme Court in special Leave to Appeal (C) No.6706 of 2023 dated 13th April, 2023. The decision of the High Court of Delhi in the case of *Salil Gulati vs. Assistant Commissioner of Income Tax, Circle 49(1) and Ors.* reported in MANU/DE/3517/2022, which was decided against the assessee, has been affirmed by the Hon’ble Supreme Court as the Special Leave Petition in Special Leave to Appeal (C)No.7466 of 2023 was dismissed by the Hon’ble Supreme Court on 11th April, 2023 by a speaking order. Thus, the legal issue with regard to limitation needs to be considered and precisely for such reason the writ petition has been entertained. One small yet significant distinguishing feature in the instant case is that apart from staying the reopening of the assessment, the appellant had also prayed for a declaration declaring that the provisions of Notification No.20/2021 dated 31st March, 2021 and Notification No.38/2021 dated 27th April, 2021 issued under Section 3(1) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 as ultra vires and unconstitutional. Prima facie it appears that such grounds were not raised in the other matters which have now travelled upto the Hon’ble Supreme Court. However, the said issue had been considered by the High Court of Gujarat in the case of *Keenara Industries Pvt. Ltd. (supra)* and the decision has been rendered in favour of the assessee. That apart, the said ground was canvassed in the case of *Rajeev Bansal* and the issue was decided in favour of the assessee and at the instance of the revenue, the Hon'ble Supreme Court has stayed the said judgment.

Thus, considering the present position of law, we are of the view that if the re-assessment proceeding is allowed to proceed further, the writ petition will become infructuous. Therefore, there will be a stay of all further proceedings pursuant to the order dated 22nd July, 2022 passed under Section 148A(d) of the Act till the writ petition is heard and disposed of. However, the period of stay shall not be taken advantage of by the assessee for the purpose of computation of limitation.

The respondent/revenue is directed to file their affidavit-in-opposition in the writ petition within three weeks from date; reply thereto, if any, be filed within three weeks thereafter. List the writ petition before the appropriate learned Single Bench in the monthly list of July, 2023.

The appeals and the connected applications accordingly stand disposed of.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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