OD – 31

APOT/96/2023
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

PAWAN KUMAR AGARWAL, HUF

-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. Pratyush Jhunjhunwala, Adv.
Mr. Samit Rudra, Adv.
...for the appellant.

Ms. Smita Das De, Adv.
Mr. Amit Sharma, Adv.
...for the respondent.

The Court : We have heard Mr. Pratyush Jhunjhunwala learned counsel assisted by Mr. Samit Rudra, learned advocate for the appellant/assessee and Ms. Smita Das De, leaned standing counsel assisted Mr. Amit Sharma, learned advocate for the respondent/revenue.

This intra-court appeal filed by the writ petitioner is directed against the order dated 31st March, 2023 passed in WPO/745/2023. In the said writ petition, the appellant had challenged the correctness of the order passed by the Assessing Officer under Section 148A(d) of the Income Tax Act, 1961 (the

'Act' for brevity) raising various objections, and, in particular that the proceedings are barred by limitation. After the order was passed under Section 148A(d) of the act, the Assessing Officer has issued a notice under Section 142(1) dated 11th March, 2023. In response to the said notice, the appellant had submitted their objections on 15th March, 2023 and the objections were dealt with by the Assessing Officer and an order/communication was sent to the appellant dated 18th March, 2023. The learned writ Court, on considering the said communication/order dated 18th March, 2023 was of the view that the order does not deal with the factual and legal issues which have been pointed out by the assessee in their reply dated 15th March, 2023 and thought fit to set aside the order/communication dated 18th March, 2023 and remanded the matter back to the Assessing Officer for fresh consideration.

In our view, the Assessing Officer, after having passed an order under Section 148A(d) of the Act cannot decide the question of limitation for initiation of reopening proceedings at a stage where notice under Section 148 has been issued. Therefore, in order to give an effect to the order passed by the learned writ Court, the order passed under Section 148A(d) of the Act dated 28th July, 2022 has to be necessarily set aside since the limitation issue goes to the root of the matter and the learned single Judge having been convinced that the Assessing Officer did not deal with the issue in an appropriate manner while passing the order dated 18th March, 2023 to undertake the exercise directed to be done by the learned writ Court, the order passed under Section 148A(d) of the Act has to be necessarily set aside and the matter stands restored to the stage of issuance of Section 148A(b) of the Act.

Accordingly, the appeal (APOT/96/2023) is allowed and the order passed under Section 148A(d) of the Act is set aside and the proceedings are restored to the stage of issuance under Section 148A(b) of he Act and the Assessing Officer is directed to consider the objections raised by the assessee both factually and legally and take note of the decisions which have been relied on by the assessee and after affording an opportunity to the assessee, redo the entire exercise in accordance with law. The above direction be complied with by the Assessing Officer within a period of twelve weeks from the date of receipt of server copy of this order.

Consequently, the connected application (IA No.GA/1/2023) also stands disposed of.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

As