OD-8

APOT/142/2023
IA NO: GA/2/2023
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

INCOME TAX OFFICER, WARD-47(1), KOLKATA
VS
GITA DEVI GOENKA AND OTHERS

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 17th July, 2023

Appearance :
Mr. Om Naraian Rai, Adv.
Mr. Amit Sharma, Adv.
Mr. Suprovat Banerjee, Adv.
... for the appellant
Mr. Arun Kumar Upadhyay, Adv.
Ms. Shobha Upadhyay, Adv.
...for respondents

The Court : This intra-Court appeal by the department is directed against the judgement and order dated November 22, 2022, by which the learned Single Bench quashed the entire re-assessment proceedings on the ground that the re-assessment cannot be proceeded against a dead person.

It is submitted by Mr. Om Narain Rai, learned standing Counsel appearing for the appellant, that the first notice issued under Section

148 of the Act dated 30th July, 2022 was served on the assessee and the assessee was alive at the relevant point of time. Thereafter, when the amendment was made to the statute and Section 148A was inserted, fresh notice was served on the assessee, who was alive at the relevant point of time. It is thereafter, the assessing officer has passed an order under Section 148A(d) of the Act dated 28th July, 2022 and issued consequential notice under Section 148, dated 30th July, 2022, which was impugned in the writ petition.

In our considered view, if the Court had to grant relief on the ground that re-assessment proceedings cannot proceed against a dead person, facts needs to be gone into. More so, the department takes a stand that both notices, issued under Section 148 as well as Section 148A(d) of the Act were served on the assessee who was alive at the relevant time. Therefore, we are of the view that the writ petition should be heard on merits after giving an opportunity to the department to file their affidavit-in-opposition.

For the above reason alone, the order impugned before us is interfered.

In the result, the appeal is allowed. The order passed in the writ petition is set aside and the writ petition is restored to file of the learned Single Bench with a direction to the appellant department to file their affidavit-in-opposition within three weeks from date and reply, if any, within two weeks thereafter.

Let the writ petition be listed before the appropriate learned Single Bench on 23rd August, 2023. Till then the re-assessment proceedings shall remain stayed.

The respondent assessee is at liberty to canvass all points in the writ petition and also is at liberty to file reply to the affidavit-in-opposition, which has been directed to be filed by the department.

The application accordingly also is disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/S.Das
AR(CR)