

ORDER SHEET
WPO/1122/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

GIRIRAJ COMMERCIAL PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date: 12th July, 2023.

Appearance:
Mr. Brijesh Kumar Singh, Adv.
Mr. Om Prakash Prasad, Adv.
...For the Petitioner
Mrs. Smita Das De, Adv.
...For the Respondents
Mr. Bipul Kundalia, Adv.
Mr. Pranit Bag, Adv.
.....Amicus Curiae

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 7th April, 2023 under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2018-19 on the ground that the same has been passed without approval from the "Specified Authority" as described under Section 151(ii) of the Income Tax Act, 1961 by contending that the approval has been taken from the Principal Commissioner of Income Tax when admittedly the specified authority for approval in this case is Principal Chief CIT since three years has not been passed from the end of the relevant assessment year on the date when the aforesaid impugned order was passed as alleged by the petitioner.

Mrs. Das De, learned advocate appearing for the respondent Income Tax Authority has brought to the notice of the Court the recent amendment

under Section 151 of the Income Tax Act, 1961 which is relevant and is quoted as hereunder :

“151. Specified authority for the purposes of section 148 and section 148A shall be, -

- (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year ;
- (ii) Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year

Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149.”

He has also drawn attention of the Court towards the recent amendment in Section 149(1) of the Act which are quoted as hereunder :

“Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be extended:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of

section 148A does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly. Explanation.- For the purposes of clause (b) of this sub-section “asset” shall include immovable property, being land or building or both, shares or securities, loans and advances, deposits in bank account.”

On a plain reading of the fifth proviso under Section 149(1) it appears that for the purposes of computing the period of limitation for passing order under Section 148A of the Act, the time or extended time allowed to the assessee, as per show-cause notice under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded.

It also appears on a plain reading of the sixth proviso under Section 149(1) of the Act that in addition to the time available to the assessing officer for the purpose of limitation as per the aforesaid fifth proviso further time of seven days is available to him while computing the limitation period for the purpose of passing order under Section 148A(d) of the Act.

It appears from record that in the instant case notice under Section 148A(b) of the Act was issued on 17th March, 2022 by which petitioner was asked to give response/objection to the same within 30th March, 2022 and it also appears from record that in response to the same petitioner has filed its objection on 4th April, 2022. It means that if the period from the date of issuance of notice under Section 148A(b) of the Act and date of response is taken into account then eighteen days has to be excluded and in addition

another seven days has to be excluded for the purpose of calculating the limitation of three years which means the assessing officer as per the aforesaid proviso referred hereinabove was entitled to pass the impugned order under Section 148A(d) of the Act till 11th April, 2023 while in this case the impugned order under Section 148A(d) of the Act was passed and notice under Section 148 of the Act was issued on 7th April, 2023 which is very much within the period of limitation for the purpose of computation.

Considering the facts and circumstances of this case it is an admitted position that after taking into consideration the period allowed to the Assessing Officer under the aforesaid fifth and sixth proviso to Section 149(1) of the Act, the impugned order under Section 148A(d) of the Act by excluding the time granted to the petitioner to file response to the notice under Section 148A(b) of the Act and a further period of seven days are excluded from the date of expiry of normal period of three years for the purpose of assessment, the impugned order passed under Section 148A(d) of the Act is very much within three years in this case and as such for passing the aforesaid impugned order Principal CIT and not the Principal Chief CIT is "Specified Authority" for approval of the same. In view of the aforesaid factual and legal position "Specified Authority" for the purpose of approval in this case is Principal CIT and the assessing officer has rightly taken approval from the Principal CIT concerned and such approval for passing the impugned order under Section 148A(d) of the Act is perfectly legal and valid and the aforesaid impugned order does not call for any interference by this Writ Court.

Accordingly, this writ petition being WPO 1122 of 2023 is dismissed.

This Court appreciates the assistance rendered by both the amicus curiae, Mr. Kundalia and Mr. Bag in this matter.

(MD. NIZAMUDDIN, J.)

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