OD –5

ORDER SHEET
WPO/1129/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

LAKSMAN PRASAD AGARWAL
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 21st June, 2023.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Anuj Mishra, Adv.
Mr. Debdatta Saha, Adv.
Mr. Anujit Mookherji, Adv.
...For the Petitioner
Mr. Vipul Kundalia, Adv.
...For Income Tax Authority
Mr. Ratul Das, Adv.
Mr. Sunit Biwas, Adv.
...For Respondent no. 4.

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has made a prayer for relief of setting aside the impugned notice for reassessment proceeding issued under Section 148 of the Income Tax Act, 1961 dated 7th April, 2021 and the notice issued under Section 148A(b) of the Act dated 23rd May, 2022 and the order issued under Section 148A(d) of the Act dated 30th July, 2022 and the final assessment order under Section 147 of the Act 26th March, 2022 which has been culminated into notices of demand and penalty dated 26th March, 2023. It appears from record that the very foundation of the impugned proceeding under Section 147 of the Act is the notice under Section 148A(b) of the Act which was issued on 23rd May, 2022 in the name of PM Cold Storage Private Limited and all the notices were issued from time to time and final assessment order has been passed in the name of PM Cold Storage Private Limited and initial notice under Section 148A(b) of the Act has been culminated in the final assessment year dated 26th March, 2023. Now this writ petition has been filed by one Lakshman Prasad Agarwal on 12th May, 2023 that is almost after expiry of one year from May, 2022. Petitioner in this writ petition, Mr. Lakshman Prasad Agarwal, wants this Court to invoke Constitutional Writ Jurisdiction and interfere with the final assessment order which has been passed against PM Cold Storage Private Limited though he is contending that he has nothing to do with the entity PM Cold Storage Private Limited.

Mr. Ratul Das, learned advocate appearing for the Resolution Professional/ respondent no. 4 submits that all the notices should have been issued to Resolution Professional and final assessment order should have been served upon him in view of his appointment as Resolution Professional under Section 16 of the Insolvency and Bankruptcy Code, 2016 and respondent no. 4 submits that he is ignorant about whole impugned proceeding and he came to know about the same only after service of the copy of the writ petition upon him. Learned advocate appearing for the respondent no. 4 further submits that order of moratorium has already been passed in the case of assessee PM Cold Storage Private Limited under Section 14 of the Insolvency and Bankruptcy Code, 2016 and that no assessment or reassessment proceeding could be initiated or proceeded by Income Tax Authority concerned against PM Cold Storage Private Limited.

Considering the facts and circumstances of the case and submission of the parties it is directed that any further action by the respondent Income Tax Authority will be taken only after considering the relevant provisions of the Insolvency and Bankruptcy Code, 2016 and particularly after taking into consideration the aforesaid orders under Sections 14 and 16 of the aforesaid Code. Any person aggrieved by the impugned assessment order shall be at liberty to seek appropriate remedy before the appropriate forum in accordance with law.

With these observations and directions, this writ petition being WPO 1129 of 2023 stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/