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ORDER SHEET
WPO/1111/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SRIDHAR CORPORATE MANAGEMENT PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 26th July, 2023.

Appearance:
Mr. Subir Sanyal, Adv.
Mr. Narendra Kedia, Adv.
...For the petitioner
Mr. Amit Sharma, Adv.
...For the Respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has initially challenged the impugned order under Section 148A(d) of the Income Tax Act, 1961, dated 19th July, 2022 relating to assessment year 2014-15 on the ground of non-consideration of its objection that the impugned proceeding is barred by limitation by its response/objection dated 27th June, 2022 to the notice under Section 148A(b) of the Income Tax Act, 1961 and even having no reference of the said objection either in the order under Section 148A(d) or Section 147 of the Act. Petitioner further challenges the impugned assessment order dated 29th May, 2023 under Section 147 of the Act which was passed during the pendency of the writ petition. Though in this case assessment order under Section 147 of the Act has been passed which is an appealable order, petitioner submits that at each and every stage of the proceedings right from the stage of issuance of notice under Section 148A(b) of the Act and even after passing the order under Section 148A(d) of the Act petitioner has repeatedly taken this point of limitation which has not at all been considered by the assessing officer as would be reflected by its order under Section 148A(d) as well as order under Section 147 of the Act.

Mr. Sharma, learned Advocate appearing for the respondents in opposing the writ petition submits that the writ petition should not be entertained in view of availability of alternative remedy since the assessment order under Section147 of the Act is an appealable order under the statute. He further defends the order under Section 148A(b) of the Act as well as impugned order under Section 147 of the Act by contending that since the petitioner has participated in the proceeding subsequent to the order under Section 148A(d) of the Act, he is precluded from challenging the impugned assessment order by the principle of waiver.

Considering the facts and circumstances as appears from record and submissions of the parties, I am of the view that though the impugned assessment order which has been challenged by way of supplementary affidavit is an appealable order which was passed after filing of the writ petition but since from the time of initiation of proceeding by way of issuance of notice under Section 148A(b) of the Act petitioner has continuously taken the point of legality of the initiation of impugned proceeding being barred by limitation and more particularly in this case the assessing officer has not at all considered and disposed of the same and at least it could have rejected the objection of the petitioner by giving reasons in its order under Section 148A(d) of the Act if he had felt to do so and even after passing the order under Section 148A(d) of the Act and subsequent notice under Section 148 of the Act petitioner has regularly taken the objection of legality of the proceeding till the time of passing of the impugned assessment order under Section 147 of the Act which has not been considered at all at any stage by passing any reasoned and speaking order, I am of the view that in view of the aforesaid exceptional circumstances in spite of availability of alternative remedy both the aforesaid impugned orders under Section 148A(d) of the Act and order under Section 147 of the Act are liable to be interfered and accordingly held not sustainable in law and the same are set aside and the matter is remanded back to the assessing officer concerned to proceed afresh in accordance with law after considering the objection of the petitioner dated 27th June, 2022 against the notice under Section 148A(b) of the Act.

Needless to mention that in course of further proceeding on the basis of this order the assessing officer will proceed in accordance with law and by observing principles of natural justice.

With these observations and directions, this writ petition being WPO 1111 of 2023 stands disposed of.

Supplementary affidavit and affidavit of service filed in Court be kept with the records.

(MD. NIZAMUDDIN, J.)

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