

ORDER SHEET
WPO/1132/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SKP MERCHANTS PRIVATE LIMITED
VS
INCOME TAX OFFICER WARD 1(1), KOLKATA, INCOME TAX DEPARTMENT
AND ANR.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 12th June, 2023.

Appearance:
Mr. Anuj Singh, Adv.
Ms. Trinisha De, Adv.
Mr. Siddharth Ray, Adv.
Mr. Arun Kumar Singh, Adv.
...For the Petitioner
Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.
...For the Respondents

The Court: Heard learned advocates appearing for the parties.

Supplementary affidavit filed in Court be kept with the record.

By this writ petition, petitioner has challenged the impugned order dated 11th April, 2023 under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2019-20 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 CIT since three years has been passed from the end of the relevant assessment year on the date when the aforesaid impugned order was passed.

Mr. Kundalia, 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 Income Tax Act and particularly fifth and sixth proviso under 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 is allowed to the assessing officer 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 which 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 of this case and is admitted position that even after taking into consideration the period allowed under the aforesaid fifth and sixth proviso the order under Section 148A(d) of the Act with regard to the issue of approval, it is not saved since more than seven days has been expired at the time of passing of the aforesaid impugned order even after excluding the period under the fifth proviso of the aforesaid section.

Considering the facts and circumstances of this case and submissions of the parties and taking into consideration the aforesaid factual and legal position, the impugned order under Section 148A(d) of the Act dated 11th April, 2023 is set aside and the case is remanded back to the assessing officer concerned to proceed afresh and pass order in accordance with law and after observing principles of natural justice after giving opportunity of hearing to the petitioner or its authorised representative, within a period of eight weeks from the date of communication of this order, from the stage such irregularity has been committed in taking approval from the “specified authority”.

With these observations and directions, this writ petition being WPO 1132 of 2023 stands disposed of.

(MD. NIZAMUDDIN, J.)

TR/

