OD-13

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELATE JURISDICTION
ORIGINAL SIDE

APOT/176/2023
IA NO. GA/1/2023, GA/2/2023

AGNI TRANSPORT PRIVATE LIMITED
VS.
INCOME TAX OFFICER WARD 11(1) AND ORS.

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date : 28TH JUNE 2023.

Mr. Pratyush Jhunjhunwala, Adv.
...for appellant.
Mr. Aryak Dutt, Adv.
...for respondents.

The Court :- This appeal filed by the writ petitioner against the order dated 06.06.2023 in WPO/1092/2023. The writ petition was filed by the appellant challenging the order dated 23.07.2022 passed under Section 148(d) of the Income Tax Act, 1961, relating to the assessment year 2014-15. The writ petition was dismissed on the ground that the Writ Court cannot shut its eyes and ignore bogus transaction by cell companies and Court cannot exercise jurisdiction under Article 226 of the Constitution. It appears that there was an allegation that there were certain bogus transactions. Nevertheless, the prayers sought for in the writ petition is to quash the proceeding order passed under Section 148(d) of the Act. As against such an order no appeal or revisional remedy has been provided under the provisions of the Income Tax Act, 1861. Therefore, the correctness of the order has to be examined as and when a challenge occurs. In the instant case, the appellant has raised an issue stating that a notice under Section

148 cannot be issued after the lapse of six years from the end of the relevant assessment year and in the instant case, it is stated that the six years from the end of the relevant assessment year was lapsed on 31.03.2021 and the notice under Section 148 which was subsequently treated as a notice under Section 148A was issued on 28.06.2021 and, therefore, the order dated 23.07.2022 and the notice under Section 148A(d) dated 24.05.2022 together with the notice under Section 148 for the assessment year 2014-15 is barred by law and is to be treated as invalid. Since such a contention has been raised, we are of the view that the respondent should be given an opportunity to rebutt such contention/grounds which has been raised by the appellant among other grounds. Therefore, we are of the view that it will be better if affidavit-in-opposition is directed to be filed by the respondent and thereafter, the writ petition can be disposed of by recording finding of facts and law.

In the light of the above, we are of the view that the writ petition should be heard and decided on merits.

In the result, the appeal is allowed. The order passed in the writ petition is set aside and the writ petition stands restored to the file of Single Bench. The respondent is directed to file their affidavit-in-opposition within three weeks, reply, if there be any, within two weeks thereafter and let the writ petition be listed before the concerned Hon'ble Court in the week commencing 1st August, 2023.

In the light of the above order, till the matter is being heard by the learned Single Bench, the respondent department shall not proceed with reassessment proceeding.

The applications being GA/1/2023 and GA/2/2023 stand disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)

Pkd/GH.