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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
<u>ORIGINAL SIDE</u>

APO/91/2023
IA NO: GA/1/2023
JNANENDRA NATH DAS BAIRAGYA
VS
UNION OF INDIA AND ORS.

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th August, 2023

<u>Appearance :</u>
Mr. Subash Agarwal, Adv.
..for the appellant.

Mr.Vipul Kundalia, Adv.
Mr.Anurag Roy, Adv.
...for the respondent.

The Court : This intra-court appeal by the writ petitioner is directed against the order dated 8th June, 2023 in WPO No. 1120 of 2023.

The appellant had filed the writ petition challenging an order passed by the respondent Assessing Officer under Section 148A(d) of the Income Tax Act, 1961 (the Act), dated 31st March, 2023 for the assessment year 2016-17. The writ petition has been dismissed by the learned Single Bench on the ground that the assessee has ample opportunity to put forth all their contentions in the reopening proceedings pursuant to the notice under Section 148 of the Act. As could be seen from the relevant documents filed in the stay petition, a notice dated 14th March, 2023 was issued under Section 148A(b) of the Act, wherein a purchase of immovable property effected by the assessee was subject matter of the issue. The assessee was furnished a questionnaire containing seven questions. The assessee submitted their reply dated 21st March, 2023 stating that the Income Tax return was not filed by him because the assessee's total income is below the threshold limit and certain explanation was also given with regard to the purchase of the immovable property. The Assessing Officer upon considering the explanation has passed an order dated 31st March, 2023 under Section 148A(d) of the Act. On perusal of the order, it is seen that the Assessing Officer has examined the merits of the matter and has come to a conclusion that the assessee has failed to furnish details of the source of income with supporting documents and the submissions of the assessee is not found tenable.

This order was put to challenge in the writ petition. The assessee contended that the notice under Section 148 has been issued on 31st March, 2023, beyond the period of three years from the end of relevant assessment year. Therefore, it is not sustainable in law being barred by limitation inasmuch as the alleged/likely escape of income is less than Rs.50 Lacs. The assessee has also questioned the jurisdiction of the Assessing Officer stating that it is only the voiceless assessment authority who can proceed with the matter. The issue which was subject matter of the show cause notice issued under Section 148A(b) of the Act is concerning the purchase of an immoveable property and the valuation of the property as well. Apart from that, there was an allegation that the assessee has not filed his income tax return. The assessee was called upon to furnish the requisite documents to support their contentions. The assessee has furnished a copy of the deed of conveyance and stated that the assessee's total income was below the threshold limit and is not required to file an Income tax return. This aspects of the matter are to be examined by the Assessing Officer who will require to adjudicate into factual aspects, much of which has been disputed by the assessee. With regard to the jurisdiction of the Assessing Officer to issue the notice, such a point was canvassed for the first time in the writ petition. If in the opinion of the assessee the show cause notice itself was barred by limitation or was bad for any other reason, this issue ought to have been raised by the assessee at the first instance. However, we do not wish to foreclose the assessee from canvassing these points in the reopening proceedings which will be conducted by the Assessing Officer pursuant to the notice issued under Section 148 of the Act, dated 31st March, 2023.

For the above reasons, we are of the view that the Learned Single Judge was right in not interfering with the order passed by the Assessing Officer under Section 148A(d) of the Act.

In the result, the appeal is dismissed, leaving it open to the assessee to raise and canvass all points in the reassessment proceedings including the issues relating to the jurisdiction and as to the requirement of the assessee to file an Income tax return for the assessment year under consideration.

The appeal is dismissed with the above observations.

The stay application being GA/1/2023 is also dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

SN/GH.