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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/97/2023
IA NO: GA/1/2023
SURENDRA KUMAR SHAH
VS
INCOME TAX OFFICER, WARD-22(2), KOLKATA

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 11th August, 2023

Appearance :
Mr. Narendra Singh Saini, Adv.
Mr. Devendra H. Jain, Adv.
Mr. A.K. Gandhi, Adv.
Ms. Sweta Gandhi Murgai, Adv.
...for appellant
Mr. Prithu Dudheria, Adv.
...;for respondent

The Court : - This intra-Court appeal is directed against the order 6.6.2021 in WPO /1072/23. The appellant/assessee had challenged the order dated 12.04.2023 passed under Section 148A(d) of the Income Tax Act, 1961 and the consequential notice issued under 148 for the assessment year 2019-20. The learned Single Bench had dismissed the writ petition on the ground that the assessee would have ample opportunity in reassessment proceedings and accordingly the writ petition was dismissed. Aggrieved by such order the appellant has preferred the present appeal.

Heard learned Counsel on either side.

The grounds which have been canvassed by the appellant in writ proceedings are all touching upon the jurisdiction of the assessing officer to initiate the reassessment proceedings. The first contention which was raised before the learned Writ Court as well as before the assessing officer was that the reassessment proceedings is bad in law on the ground that the alleged income based on the search upon a third party is specifically conferred only in Section 153 of the Act and accordingly, recourse cannot be taken by assuming the jurisdiction under Section 147 of the Act. Further, it is contended that the entire reassessment proceeding is void ab initio ad the provisions of Section 153A/153C overrides Section 147/148 of the Act and therefore, it has to be mandatorily followed by the revenue. Further it was contended that the amendment made by Finance Act, 2021 expressly provides that the proceeding under Section 153C cannot be initiated only in such cases where search action was initiated on or before 1.4.2021 whereas in the case on hand entire search action as well as dissemination of information was made between January 2019 and June 2019 and accordingly the action of assessment, if any can only be made under Section 153C of the Act. Apart from that the assessee would contend that the jurisdictional assessing officer has no jurisdiction to initiate reassessment proceedings as and it is only the faceless assessment centre would have the jurisdiction, since the appellant assessee has raised the jurisdictional issue, at the first instance before the assessing officer the same ought to have been decided. Furthermore, the jurisdictional issue has been specifically pleaded and raised in the writ petition. Therefore, in order to decide the jurisdictional issue, it is necessary that the respondent department should file their affidavit in opposition so that a decision can be taken on the questions of law which have been raised by the petitioner. Therefore, we are of the view the writ petition should be heard and decided on merits and opportunity stated to be available to the assessment in the reassessment proceedings under Section 148 of the Act, would not be an adequate opportunity since the appellant assessee questions the jurisdictions of the assessing officer to initiate reassessment proceedings, which issue would go to the root of the matter. Therefore, the writ petition has to be decided on merits. The learned Advocate appearing for the appellant would submit that the matter can be decided by this Court. This appeal being an intra-Court appeal under Clause 15 of the Letters Patent the Court would be required to decide the correctness of the order passed by the learned Writ court which had dismissed the writ petition wherein the jurisdictional issue raised by the appellant has not been decided. Therefore, it is necessary that the writ petition should be decided by the learned Single Bench wherein all the points can be urged by the appellant and suitably defended by the respondent department.

For the above reasons, the appeal is allowed. The order passed in the writ petition is set aside and the writ petition is restored to the file of the learned Single Bench. The entire reassessment proceedings pursuant to the order passed under Section 148A(d) of the Act dated 12.04.2023 and notice issued under Section 148 of the Act shall remain stayed till the writ petition is heard and disposed of. The respondent department is directed to file an affidavit in opposition within a period of six weeks from date, and reply, if any within three weeks thereafter.

Let the writ petition be listed before the appropriate learned Single Bench during first week of December, 2023.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.