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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/223/2022
IA NO.GA/1/2022

MEENAKSHI TEA COMPANY LIMITED

-Versus-

UNION OF INDIA AND ORS.

APOT/224/2022
IA NO.GA/1/2022

MEENAKSHI TEA COMPANY LIMITED

-Versus-

UNION OF INDIA AND ORS.

Appearance:
Mr. J. P. Khaitan, Sr. Adv.
Mr. Mrigank Kejriwal, Adv.
Mr. S. Rudra, Adv.
...for the appellant.

Mr. Smarajit Roychowdhury, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 2nd January, 2023.

The Court : We have heard Mr. J.P. Khaitan, learned senior counsel assisted by Mr. Mrigank Kejriwal and Mr. Samit Rudra, learned Advocates for the appellant and Mr. Smarajit Roychowdhury, learned standing counsel for the respondents.

This intra-Court appeal filed by the writ petitioner is directed against the order dated 24th November, 2022 passed in WPO/2894/2022. Since the assessee in both the appeals are one and the same and the legal issue raised is common, the appellants were heard together and are disposed of by this common judgment and order.

The appellants had challenged the order passed by the assessing officer under Section 148A(d) of the Income Tax Act, 1961 dated 25th July, 2022 for the assessment year 2016-17 and dated 27th July, 2022 for the assessment year 2015-16 on the ground that there is a jurisdictional error. The learned Single Bench was convinced that the writ petitions have to be entertained as there is a question of law involved in the matter. However, the learned Single Bench declined to grant any interim order which necessitated the appellant to file the intra-Court appeal.

We have elaborately heard the leaned Advocates for the parties and we are convinced that a question of law arises for consideration in the writ petition and the learned Single Judge rightly held so. However, in the meantime, if the re-assessment proceedings is allowed to be proceeded further then the writ petition itself will become infructuous. The question of law which has been canvassed in the writ petition is as to whether the assumption of jurisdiction by the assessing officer under Section 148A of the Act is valid in law.

It is not in dispute that the proceedings for reopening commenced prior to amendment of Section 148. After the amendment, in the light of the decision in the case of *Ashish Agarwal vs. Union of India* reported in 2022 SCC Online SC 543, the proceedings initiated under Section 148 of the Act prior to amendment were held to be valid and to be treated as proceedings under the amended Section 148A of the Act. Consequently, the assessee sought for reasons for reopening which were furnished to the assessee on 8th November, 2021. The assessee submitted their reply to the said reasons for reopening. Subsequently, it appears that the supplementary reasons were given to the assessee for which the assessee had also submitted their reply/objection. Further, the assessing officer, while passing the order under Section 148A(d) of the Act did not arrive at any adverse finding against the assessee on the issues which were pointed out in the reasons for reopening at the first instance, but proceeded to pass an order on the issues which were raised as supplementary reasons.

The question would be whether the assumption of jurisdiction by the assessing officer under Section 148A of the Act was justified after having abandoned or not given any adverse finding on the reasons for reopening initially furnished to the assessee on 8th November, 2021 was in accordance with law. This legal issue will be considered in the writ petition after affidavits is filed by the revenue for which direction has already been issued by the learned Single Judge.

Thus, we are of the view that the appellant/assessee has made out a prima facie case for grant of an interim order till the disposal of the writ petition.

Accordingly, the appeals (APOT/223/2022 and APOT/224/2022) are allowed and the orders passed by the assessing officer under Section 148A(d) of the Act and the consequential notice issued under Section 148 of the Act shall remain stayed and shall abide by the orders that may be passed in the writ petition.

Consequently, the connected applications for stay (IA No.GA/1/2022) also stand disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.