05.03.2024
Item No.10
gd/ssd

FMA/310/2023
IA NO: CAN/1/2023
AMIT ROY
VS
UNION OF INDIA AND ORS.

Mr. Shantanu Mishra
..for the Appellant.

Ms. Smita Das De
..for the Respondents.

1. This intra court appeal by the writ petitioner is directed against the order dated 11th January, 2023 by which the earlier order passed on 03.01.2023 was directed to continue.

2. In the order dated 03.01.2023 the learned Single Bench held that there was no scope for passing any interim order in the matter and the issue involved required affidavits to be filed by the respondents for final adjudication.

3. The appeal was filed before this court on 1st February, 2023 and the matter had come up for hearing before the Bench on earlier occasions and the matter stood adjourned from time to time.

4. In this appeal the appellant had contended that no proceedings can be initiated against the appellant company as the appellant company has been struck off the rolls of the Registered of Companies and a notification to the said fact has also been issued.

5. Apart from that the contention raised in the writ petition has been reiterated stating that no notice under Section 148 of the Income Tax Act, 1961 could have been issued by the respondents for the assessment year 2016-17 after expiry of three years from the end of the relevant assessment year and in view thereof, the order dated 31st July, 2022 passed under Section 148A(d) of the Act and the consequential notice dated 31st July, 2022 under Section 148 of the Act are hopelessly barred by limitation.

6. Undoubtedly, the issues which have been raised in the writ petition and the issue with regard to whether the re-assessment can be proceeded against the company which has been struck off the rolls of the Registered of Companies which is also legal issue requires affidavit to be filed by the department. Till now there appears to be no steps taken by the department to initiate any recovery proceedings or any other coercive action and the matter has been kept in cold storage.

7. Therefore, we are of the view that all further proceedings pursuant to the order passed under Section 148A(d) of the Act dated 31st July, 2022 and the consequential notice issued under Section 148 of the Act shall remain stayed till the writ petition is disposed of.

8. The respondent departments are directed to file their affidavit-in-opposition within three weeks from date; reply, if any, be filed within two weeks thereafter.

9. List this matter before the appropriate Bench in the monthly list of April, 2024.

10. With the above direction, the appeal stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)