Form No. J.(2)
Item No. 6

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
HEARD ON: 16.04.2024

DELIVERED ON: 16.04.2024

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA
M.A.T. 721 of 2024
With
IA No. CAN 1 of 2024
Rakesh Bhartia
Vs.
Union of India & Ors.

Appearance:-
Mr. J.P. Khaitan, Sr. Adv.
Mr. P. Jhunjhunwala
Mr. A. Goyel
.........for the appellant

Ms. Smita Das De ......for the respondents

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioner is directed against the order dated 9th April, 2024 by which the interim order, which was granted on 15th December, 2023 valid till 30th April, 2024 was modified to the prejudice of the appellant/assessee.

2. The appellant had challenged the show cause notice issued under the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 on several grounds and in particular that it is without jurisdiction and hopelessly barred by time. The writ petition was entertained and the Court was prima facie satisfied that the appellant

has made out a case and therefore, the interim order dated 15th December, 2023 was passed, which was a conditional interim order, whereby the authority was permitted to proceed with the matter and to pass the final assessment order within three months from the date of the order i.e. 15th December, 2023 but however, shall not give effect to the said assessment order or communicate the same to the appellant without the leave of the Court.

3. In our considered view, there was no change of circumstances for the Court to modify this order on 9th April, 2024 and the matter was brought before the Court at the instance of the appellant for the purpose of extending the interim order, which was in force till 30th April, 2024.

4. The learned senior standing counsel for the respondents/department would submit on instructions from the department that recovery proceedings will not be initiated pursuant to the assessment order but however, the consequential proceedings should not be stayed by this Court.

5. The challenge having been made in the writ petition to the jurisdiction of the authority to initiate action under the said enactment and the Court having been satisfied that the writ petition should be heard and decided on merits and directed affidavit in opposition to be filed by the department, if the respondents/department are to proceed further by initiating penalty proceedings as well as prosecution, this will lead to multiplicity of proceedings and would further complicate the issue and virtually render the challenge in the writ petition as infructuous.

6. Therefore, this Court is of the view that pending disposal of the writ petition, the respondents/department shall not initiate any coercive action

or any consequential action pursuant to the assessment order dated 11th March, 2024.

7. The affidavit in opposition has been filed in the writ petition by the respondents/department and the appellant has got time to file his reply. After the pleadings are complete, the parties are at liberty to mention before the learned Single Bench for early hearing of the writ petition.

8. Since this Court has passed the above order, in the event at a later point of time the appellant is required to challenge the assessment order by filing a statutory appeal, the period during which the writ petition was pending, shall be excluded for the purpose of computation of limitation.

9. With the above observations/directions the appeal and the connected application stand disposed of.

10. No costs.

11. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)