Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

W.P.A 11291 of 2024

Bongaon Educational Welfare Trust & Ors.
Versus
Union of India & Ors.

For the petitioners	:	Mr. Shovan Ghosh Mr. Monojit Dawn
For the respondents	:	Mr. Aryak Dutt Ms. Riya Kundu
Heard on	:	25th June, 2024
Judgment on	:	**25th June, 2024**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the assessment order issued under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") dated 19th March, 2024.
2. The petitioners also challenge the demand raised by the respondents issued under Section 156 of the said Act dated 19th March, 2024.
3. The petitioners contend that although, the petitioner no.1 and the petitioner no.3 have separate PAN numbers yet the petitioner no.1

is in control of the management and the affairs of the petitioner no.3 and for the accounting purpose is required to be considered as one single entity.

4. According to the petitioners, the petitioner no.1 has from time to time and regularly paying income tax returns and had paid income tax returns for the Assessment Year 2019-20 thereby, declaring total income of Rs.8,58,225/- which, *inter alia*, includes the banking transactions of the petitioner no.3.

5. According to the petitioners, an assessment order under Section 143(1) dated 21st May, 2020 in respect of the Assessment Year 2019-20 was issued by the respondents, the same was, however, subsequently rectified by passing an order under Section 154 of the said Act, dated 2nd July, 2020.

6. The petitioners contend that notwithstanding the petitioner no.1 in its income tax returns had included the banking transactions of the petitioner no.3, yet the respondents had purported to issue a notice under Section 148 of the said Act dated 29th March, 2023 alleging that the petitioner no.3 had made certain cash deposits amounting to Rs.2,33,58,103/- in their bank account for the Assessment Year 2019-20 in respect whereof, no returns had been filed by them for the relevant year.

7. This was followed by a show-cause notice dated 19th February, 2024 under Section 144 of the said Act. Although, the petitioner no.3 had responded to the same by communication dated 26th

February, 2024 and appropriately clarified the circumstances under which the entirety of the banking transactions of the petitioner no.3 were included in the returns filed by the petitioner no.1, however, the Faceless Assessing Officer by ignoring the same has purportedly passed the order impugned and has also raised a demand.

8. In the facts of the case, it is submitted that the above proceedings are irregular and this court should set aside the same.

9. Mr. Dutt, learned Advocate representing the respondents, on the other hand submits that the petitioner no.3 was not taken by surprise. Both the petitioner no.1 and also the petitioner no.3 are separate legal entities and have separate PAN numbers and are considered as separate assessee within the meaning of the said Act.

10. The notice issued under Section 148 of the said Act for the Assessment Year 2019-20 was preceded by a notice under Section 148A(b) of the said Act dated 23rd February, 2023 calling upon the petitioner no.3 to show cause as regards the transactions which remained unexplained suggesting that the same escaped assessment.

11. Notwithstanding receipt of such notice, the petitioner no.3 chose not to respond to the same and ultimately an order under Section 148A(d) of the said Act was passed on 29th March, 2023 in respect of the Assessment Year 2019-20. Copies of the aforesaid notice

under Section 148A(b) of the said Act dated 23rd February, 2023 and the order under Section 148A(d) of the said Act dated 29th March, 2023, are taken on record.

12. Consequent upon the aforesaid, the notice under Section 148 of the said Act was issued.

13. The petitioners did not challenge the order passed under Section 148A(d) of the said Act. Only when the impugned assessment order has been passed, the present petition has been filed. It is submitted that the petitioners have an efficacious alternative remedy in the form of an appeal and this Court in exercise of its extraordinary writ jurisdiction ought not to entertain the writ petition.

14. Heard the learned Advocates appearing on the respective parties and considered the materials on record. Although, it is submitted by the petitioners that the petitioner no.1 is in control of the petitioner no.3 and all books of accounts of the petitioner no.3 are maintained by the petitioner no.1, yet the factum of both the petitioners being separate assessee within the meaning of the said Act cannot be lost sight of.

15. Be that as it may, it may be noticed that the petitioner no.1 claims that it had disclosed the banking transactions of the petitioner no.3 in the returns filed by the petitioner no.1. Such issue, however, cannot be conveniently decided by this Court in exercise of its extraordinary jurisdiction.

16. Admittedly, a notice under Section 148A(b) of the said Act dated 23rd February, 2023 for the Assessment Year 2019-20 was issued and served on the petitioner no.3. The petitioner no.3 chose not to respond to the same. Consequent thereon, the order under Section 148A(d) of the said Act in respect of the Assessment Year 2019-20, dated 29th March, 2023, was passed.
17. Following the above, upon issuance of a notice under Section 148 of the said Act, the assessment order under Section 147 read with Section 144 read with 144B of the said Act, for the Assessment Year 2019-20 was passed.
18. I am afraid that this court in exercise of its writ jurisdiction under Article 226 of the Constitution of India in the given facts cannot be called upon to consider the contentions raised by the petitioners especially when an alternative efficacious remedy in the form of an appeal is available.
19. However, taking note of pendency of the proceedings before this court, I am of the view that if the petitioners approach the Appellate Authority within a period of 15 days from the date of passing of this order with an application under Section 5 of the Limitation Act appropriately explaining the delay, the Appellate Authority having due regard to the pendency of the writ petition before this court and the observations made herein shall condone the delay and shall hear out and dispose of the petitioners' appeal

on merits in accordance with law, subject to compliance of formalities by the petitioners.

20. Since affidavit-in-opposition has not been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

21. With the above observations, the writ petition stand disposed of.

22. There shall be no order as to costs.

23. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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