9th July, 2024
(AK)
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W.P.A 13155 of 2024

Pratima Halder
Vs.
Union of India and others

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Ms. Shiwani Shaw
...for the petitioner.

Mr. A. Dutt
Mr. P. Dudhais
...for the respondents.

1. Affidavit-of-service filed in court today be kept on record.

2. This writ petition has been filed, *inter alia*, challenging the show cause notice dated 17th February, 2024 passed under Section 148A(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') for the assessment year 2020-21 as also the order dated 20th March, 2024 passed under Section 148A(d) of the said Act.

3. The petitioner also challenges the notice under Section 148 of the said Act on the ground that the same has been issued by the jurisdictional Assessing Officer who in terms of Section 151A of the said Act, no longer has the jurisdiction to issue the same.

4. The petitioner challenges the show cause notice as also the impugned order on two fold grounds. By referring the copy of the deed of conveyance appearing at page-38 of the writ petition, it is submitted that the conveyance had been executed on 25^{th} January, 2019 which was subsequently registered on 11^{th} February, 2019. Incidentally the said transaction forms the basis of the notice issued under Section 148A(b) of the said Act. According to the petitioner, since, the transaction did not take place during the relevant period for which the notice under Section 148A(b) of the said Act had been issued, the said notice is bad.

5. The other ground canvassed by the petitioner is that though, Section 148A(b) of the said Act embodies in it, a right to provide an opportunity of being heard to the assessee, the jurisdictional Assessing Officer ought not to have decided the said show cause without affording the petitioner an opportunity of hearing.

6. Mr. Dutt, learned Advocate enters appearance on behalf of the respondents, submit that in the instant case since, the petitioner did not pray for an opportunity of hearing, no personal hearing was granted to her.

7. Insofar as the issue of the date of execution of the conveyance is concerned, he submits that the same

is subject matter of the enquiry and this court in exercise of its extraordinary jurisdiction is not called upon to consider the same.

8. Heard learned Advocates appearing for the respective parties and considered the materials on record. At this stage without going into the issue as to whether the show cause notice had been validly issued, I am of the view, since, the provisions of Section 148A(b) of the said Act, confers a right on the assessee to be provided with an opportunity of hearing, the jurisdictional Assessing Officer ought not to have decided the show cause notice without granting an opportunity of hearing to the petitioner.

9. Since, the right to personal hearing is embedded in the statute itself, denial of such opportunity in my view vitiates the order passed under Section 148A(d) of the said Act dated 20th March, 2024 in respect of the assessment year 2020-21.

10. As such on this short point upon setting aside the order dated 20th March, 2024 passed under Section 148A(d) of the said Act, for the assessment year 2020-21, the matter is remanded back to the jurisdictional Assessing Officer.

11. The jurisdictional Assessing Officer is directed to hear out the matter a fresh upon giving an opportunity of personal hearing to the petitioner.

12. Needless to note all points raised herein as regards the challenge to the show cause notice are kept open for being decided by the jurisdictional Assessing Officer.

13. As a sequel thereto, the notice issued under Section 148 of the said Act dated 21st March, 2024 for the assessment year 2020-21 is also set aside, without deciding the challenge to the same as the same has become academic, in view of order dated 20th March, 2022 under Section 148A(d) of the said Act, being set aside.

14. With the aforesaid directions, writ petition stands disposed of.

15. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)