9th September, 2024
(AK)
77

W.P.A 17923 of 2024

Pushan Sengupta and another
Vs.
Union of India and others

Mr. Anujit Mookherji
Mr. Pritish Chandra
...for the petitioners.

Mr. Tilak Mitra
...for the respondents.

1. The present writ petition has been filed, *inter alia*, challenging an 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 29th March, 2022 for the assessment year 2014-15.

2. The petitioners contend that the petitioners along with one Ms. Moumita Chakraborty had entered into a partnership business under the name and style of M/s. Eastern Medical Services (hereinafter referred to as the 'said firm'). According to the petitioners, the said firm was started with the object of providing healthcare business services. According to the petitioners, a PAN Card bearing no.AAFFE0762J dated 28th April, 2014 was issued. Subsequently a Bank account was opened on 13th September, 2014.

3. Mr. Mookherji, learned Advocate appearing on behalf of the petitioners submit that although the

PAN Card in the name of the said firm was issued on 28th April, 2014, the assessment order had been passed in respect of the financial year 2013-2014. He submits that since the PAN Card was only issued on 28th April, 2014 the Assessing Officer could not have determined liability for the petitioners' firm in respect of the financial year 2013-2014 (Assessment Year 2014-15).

4. By placing paragraphs 6 and 7 of the said petition, he would submit that although, the petitioners had commenced the partnership business with the object of providing healthcare services, unfortunately, since the firm started accumulating loss, the firm was dissolved and the Bank account was closed on 5th April, 2021. Subsequently, sometimes on or about April 2024, on the basis of a phone call from the office of Income Tax authorities intimating that recovery proceedings would be initiated against the firm that the petitioners had become aware with regard to the aforesaid assessment order. It is submitted that the aforesaid assessment order cannot be sustained and should be set aside.

5. Mr. Mitra, learned Advocate appearing on behalf of the Income Tax authorities, would submit that the petitioners were all along aware of the proceedings and have an alternative remedy in the form of an

appeal. On the petitioners' own showing the petitioners have already not only closed down their business but also their Bank account, and as such at this stage this Hon'ble Court ought not to exercise discretion in favour of the petitioners especially since, an appellate forum has been provided.

6. Having heard the learned Advocates appearing on behalf of the respective parties and taking note of the fact that only two of the partners of Eastern Medical Services have approached this Court and since, the petitioners claim that the firm has already been dissolved, which will require consideration of several factual issues, I am of the view that there is no scope to entertain the writ petition especially when an appellate forum has been provided for.

7. In view thereof, the writ petition cannot be entertained.

8. The above order shall, however, not stand in the way of the petitioners exercising their statutory right, if so advised.

9. It is made clear that this Court has not considered the merits of the case, if an appeal is filed the authority shall deal with the same in accordance with law, having due regard to the case made out by the petitioners.

10. There shall be no order as to costs.

11. 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.)