30.09.2024
Item No.67
Court No.1
CHC
(disposed of)

Calcutta High Court
<u>In The Circuit Bench at Jalpaiguri</u>
<u>Appellate Side</u>

M.A.T. 79 of 2024
IA NO: CAN/1/2024

Dhiraj Lakhotia
Vs.
Union of India & Anr.

Ms. Radhika Agarwal, Advocate
Ms. Meghana Joshi, Advocate
Ms. Khushi Kundu, Advocate
...for the appellant

Mr. Sudipto Kumar Mazumdar Ld. D.S.G.I.
Mr. Ajoy Kumar Singhania, Advocate
...for the Income Tax Authority

1. Appeal is directed against an order dated August 16, 2024 passed in WPA 1458 of 2024.
2. By the impugned order, the learned Single Judge dismissed the writ petition.
3. Learned advocate appearing for the appellant submits that, learned Single Judge erred in dismissing the writ petition.
4. Learned Single Judge failed to take into account the consistent view of the different High Courts on the issue of notice under Section 148 of the Income Tax Act, 1961. He submits that, in the facts of the present case, the impugned notice dated March 28, 2024 was issued by the jurisdictional Assessing

Officer Ward No.3(2), Darjeeling. He refers to the Section 151A of the Act of 1961 and submits that, subsequent to the incorporation of Section151A into statute book, Central Government promulgated a scheme contemplated thereunder. Both the provisions of Section 151A and the scheme promulgated thereunder were considered by different High Courts. On true and proper consideration of such provisions different High Courts held that, subsequent to the coming into effect of the scheme promulgated under Section 151A of the Income Tax Act, 1961, any income escaping assessment is required to be done in terms of such scheme and not otherwise.

5. Learned advocate appearing for the appellant submits that, the impugned notice was issued by the jurisdictional Assessing Officer and that, the jurisdictional Assessing Officer sought to assume jurisdiction subsequent to coming into effect of the scheme promulgated in terms of Section 151A of the Income Tax Act, 1961. Petitioner replied to such notice raising the issue of jurisdiction. The jurisdictional Assessing Officer pronounced on the issue of jurisdiction as against the petitioner which the jurisdictional Assessing Officer was not entitled to do.

6. Learned Deputy Solicitor General draws the attention of the Court to the contents of the impugned order.

He submits that, learned Single Judge took into on the fact that, subsequent to the notice dated March 28, 2024 issued by the jurisdictional Assessing Officer, the Income Tax Authorities issued a notice dated June 28, 2024 under the provisions of the scheme promulgated under Section 151A of the Act of 1961. Therefore, the grievances, if any, of the petitioner stands addressed.

7. In his usual fairness, learned Deputy Solicitor General submits that, the issue of jurisdiction may be kept open to be decided by the Assessing Authority in terms of the scheme promulgated under Section 151A of the Income Tax Act, 1961 if so raised by the assessee.

8. We find from the records that, two notices were issued to the petitioner herein. Notices relate to income escaping assessment. The first notice dated March 28, 2024 issued by the jurisdictional Assessing Officer, Ward No.3(2), Darjeeling. As on date, the scheme promulgated by the Central Government in terms of Section 151A of the Act of 1961 was in force.

9. Petitioner raised objection to the assumption of jurisdiction by the Assessing Officer which was decided by the Assessing Officer.

10. It is thereafter that, the authorities under the scheme promulgated under Section 151A of the Act of 1961 issued the notice dated June 28, 2024 in

respect of the very same assessment year as against the petitioner on the ground of income escaping assessment.

11. It is not the case of the petitioner before us that, no authority can look into the issue as to income escaping assessment, if there be any. It is also not the case of the petitioner before us that, the assessment year is beyond the period of limitation prescribed by the Act of 1961.

12. In such circumstances, in our view, interest of justice would be subserved by allowing the notice dated June 24, 2024 issued by the authorities under the Scheme promulgated under Section 151A of the Act, 1961 to attain its finality. The appellant before us is at liberty to raise the issue of jurisdiction, before such authority, if so advised in accordance with law. If such issue is raised, the same be decided without being prejudiced by the earlier decision.

13. MAT 79 of 2024 along with IA No: CAN/1/2024 are disposed of without any other as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)