OD–14

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/95/2023
IA NO: GA/1/2023
HARI MOHAN BERIWALA AND OTHERS HUF
VS.
UNION OF INDIA & ORS.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 8th January, 2024

Appearance :
Mr. Kapil Goel, Adv.
Mr. Avra Mazumder, Adv.
Mr. Sandeep Goel, Adv.
Ms. Alisha Das, Adv.
...for appellant

Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.
...for respondents

The Court : This intra-court appeal by appellant is directed against the order dated 4th July, 2023, passed in WPO 1010 of 2023. The writ petition was filed by the appellant/assessee challenging the correctness of an assessment order passed under Section 143(3), read with Section 147 of the Income Tax Act, 1961 (the Act), dated 20th March, 2023, for the assessment year 2015-16.

The principal ground on which the impugned order was challenged is that it is a nullity as the assessment proceedings have been completed without issuing the notice under Section 143(2), which is mandatory.

We have heard Mr. Kapil Goel, learned Advocate appearing for the appellant and Mr. Vipul Kundalia, learned Advocate appearing for the respondents.

Learned Advocate for the appellant had placed reliance on several decisions of the Hon'ble Supreme Court as well as this Court, more particularly, in Asst. Commissioner of Income Tax & Anr. vs. M/s. Hotel Blue Moon, reported in 321 ITR 362 and 417 ITR 324 respectively.

It appears that the writ petition has been allowed at the admission stage. We are of the view that this issue has to be agitated after affidavit is filed by the Department in the writ petition placing the factual position wherein all points of facts as well as law can be agitated. Therefore, we are of the view that the writ petition has to be heard and decided on merits after an affidavit is filed by the respondent Department.

For the above reason, the appeal is allowed.

The order passed in the writ petition is set aside and the writ petition is restored to the file of the Learned Single Bench.

The respondent Department are directed to file their affidavit-in-opposition in the writ petition within four weeks from the date of receipt of the server copy of this order, after which liberty is granted to the respondent to file their reply, if any, within two weeks. Let the writ petition be listed before the appropriate Bench after a period of five weeks.

Till the writ petition is heard and decided, the impugned re-assessment order dated 28th March, 2023 shall remain stayed.

The stay application IA No : GA/1/2023 stands disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)

SN
AR(CR)