OD–16

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/113/2023
IA NO: GA/1/2023
AGARWALLA UDYOG PRIVATE LIMITED
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

<u>Appearance</u> :
*Mr. Anirudhya Dutta, Adv.*
*…for appellant*

*Ms. Smita Das De, Adv.*
*…for respondents*

The Court : This intra-court appeal by the appellant/writ petitioner is directed against the order dated 17th July, 2023 in WPO No. 1243 of 2023. The writ petition was filed challenging an order passed under Section 148A(d) of the Income Tax Act, 1961 (the Act). The appellant had challenged the notice by contending that the notice has been without jurisdiction, it is time-barred and there is no live nexus between the information relied on for the purpose of reopening the assessment.

The Learned Single Bench had dismissed the writ petition recording that in the course of reassessment proceeding the assessee can raise all contentions.

In our considered view, since the appellant had challenged the jurisdiction of the authority, more particularly, contending that the proceedings are a nullity because it is time-barred, this factual issue has to be gone into and a decision has to be taken as there is no other remedy available to the assessee against an order passed under Section 148A(d) of the Act.

For such 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 for fresh decision on merits.

The respondent Department is directed to file their affidavit-in-opposition within three weeks from the date of receipt of the server copy of this order. Reply, if any, by the writ petitioner be filed within two weeks thereafter. Let the matter be listed before the appropriate Bench after five weeks.

Till the writ petition is heard and decided, the proceedings under Section 148A(d) of the Act, dated 26$^{th}$ April, 2023 and the subsequent notice under Section 148 of the Act and all other and further proceedings shall remain stayed.

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

Affidavit of service filed in Court today be kept on record.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)

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AR(CR)