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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/2176/2004

EXIDE INDUSTRIES LTD.
VS
COMMISSIONER OF INCOME TAX -I,KOLKATA

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 2nd January, 2024.

Appearance:
Mr. Abhratosh Majumder, Sr. Adv.
Ms. Nilanjana Banerjee, Adv.
..for the Petitioner

Mr. Smarjit Roychowdhury, Adv.
..for Income Tax

The Court : Heard learned Advocate appearing for the parties. By this revision petition, petitioner has challenged the impugned notice under Section 148 of the Income Tax Act, 1961, dated 28th May, 2004, relating to the assessment year 1998-99 on the ground that the notice being barred by limitation since it was issued after expiry of four years from the end of relevant assessment year and also on the ground that the issue on which assessing officer sought to re-open the assessment relating to assessment year 1998-99, the Tribunal has already held in favour of the assessee-petitioner relating to the assessment year 2000-01 and which was not further challenged by the Department. Petitioner submits that in case of re-opening of any assessment under the old Act, after the expiry of four years from the end of relevant assessment year, mere escapement of income is not enough and there has to be omission or failure on the part of the assessee to disclose fully and truly the relevant materials in course of the original assessment proceeding and in this case neither in the recorded reason there is allegation of non-disclosure or omission or failure on the part of the assessee petitioner to disclose fully and truly the materials on the basis of which the assessing officer intends to re-open the assessment nor there is any allegation that those materials were not disclosed in the original return.

Petitioner in support of its contention relied on the judgement of this Court in the case in W.P. No.719 of 2014 (Calcutta Club Ltd. Vs. Income-tax Officer, Ward-12(3), Kolkata) reported in [2020] 114 taxmann.com 560(Calcutta) and submits that the aforesaid judgement has not been further challenged by the Department till date.

On perusal of the affidavit in opposition filed to the writ petition and considering the submissions of Mr. Roychowdhury, learned Advocate representing the Income Tax Authority, I find that the aforesaid allegation of the petitioner is substantially correct since the respondent Income Tax Authority could not produce any sufficient document to show that on the similar issue, in respect of the assessment year 2000-01 where it was held by the Tribunal, in favour of the assessee petitioner any further appeal was filed by the Department and the respondent has also failed to establish before this Court that there was any omission or failure on the part of the assessee petitioner to disclose fully and truly the relevant materials in the original return or in course of regular assessment proceeding which are the condition precedent for re-opening an assessment in case where four years have expired from the end of relevant assessment, and as such, I am of the considered view that the impugned notice under Section 148 of the Act dated 28th May, 2004, relating to assessment year 1998-99 is not sustainable in law and accordingly the same is quashed and all legal consequences will follow automatically.

With these observations, this writ petition being WPO/2176/2004 is disposed of.

(MD. NIZAMUDDIN, J.)

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