11.06.2025
Item No
A 4

Saswata

WPA 1633 of 2025

Dipak Samanta
versus
Income Tax Officer, Ward-47(2), Kolkata & Ors.

Ms. Sutapa Roy Chowdhury, Sr. Adv.
Mr. Abhijat Da
Ms. Aratrika Das
Mr. Anirban Chatterjee
...For the petitioner
Mr. Soumen Bhattacharjee
Mr. Ankan Das
Ms. Shradhya Ghosh
...For the CGST authority

1. Affidavit of service filed in Court today is retained with the record.

2. Challenging a notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") in respect of the assessment year 2013-14 dated 31st March 2021 which has been issued on 1st April 2021, the instant writ petition has been filed.

3. The petitioner also seeks to challenge the consequential orders issued under Section 147 read with Sections 144 and 144B of the said Act. The consequential penalty proceedings also form subject matter of challenge.

4. Ms. Roy Chowdhury, learned senior advocate appearing for the petitioner by placing before this Court the provisions of Section 148 of the said Act would submit that the said Section had undergone a sea change on the Finance Act, 2021 being notified. With effect from 1st April 2021 the entire provisions relating to Section 148 of the said Act stood altered. According to her since the notice under Section 148 of the said Act was issued in the new regime, the amendment provisions to Section 148 of the said Act ought to have been applied. Unfortunately, no notice under Section 148A(b) of the said Act and no order under Section 148A(d) of the said Act was passed. As such, the consequential notice issued under Section 148 of the

said Act on 1st April 2021 is bad and without jurisdiction. According to her, consequentially the entire proceedings which culminated in the assessment order and penalty proceedings as aforesaid are also bad in law and cannot be sustained notwithstanding, the statutory appeal filed by the petitioner.

5. Mr. Bhattacharjee, learned advocate appearing for the CGST authorities on the other hand would submit that since in the instant case the petitioner did not raise the above issue and had filed an appeal, the petitioner at this belated stage that too after the assessment order has been passed, should not be permitted to raise the above issue. Independent of the above, he submits that the petitioner has already invoked the statutory remedy by filing an appeal and as such, should not be permitted to pursue both the statutory remedy and the extraordinary remedy simultaneously.

6. Having heard the learned advocates appearing for the respective parties and noting that though the above petition raises a jurisdictional issue, however, at the same time having regard to the fact that the petitioner has been pursuing his statutory remedy, in my view, it would be just and proper to permit the petitioner to raise all points as have been raised in the writ petition before the appellate authority. Since, a statutory appeal has been pending since 28th April 2022 as would corroborate from the acknowledgment receipt issued by the department, I am of the view that the appellate authority should expeditiously dispose of the appeal preferably within a period of 3 months from the date of communication of this order, by affording

an opportunity of hearing to the petitioner and by permitting the petitioner to incorporate additional grounds in the appeal.

7. The parties are directed to communicate the aforesaid order to the concerned respondent authorities.

8. Since, no affidavits have been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

9. With the above observations and directions, the writ petition is disposed of.

10. All parties shall act on the basis of the server copies of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)