23.06.2025
Item No
A 50
Saswata

WPA 3723 of 2025
Manoj Kumar Bagree
Versus
Income Tax Officer, Ward-30(1), Kolkata & Ors.

Ms. Sutapa Roychowdhury, Sr. Adv.
Mr. Abhijat Das
Ms. Aratrika Roy
Mr. Anirban Chatterjee
...For the petitioner
Mr. Prithu Dudharia
...For the respondents

1. Challenging the order passed under Section 147 read with Section 144 and 144B of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") dated 16th January 2025 for the assessment year 2019-20, the instant writ petition has been filed.

2. At the very outset, Ms. Roychowdhury, learned Senior Advocate appearing for the petitioner would submit that though the writ petition seeks to raise a jurisdictional issue on the ground that the notice under Section 148 of the said Act being issued by the jurisdictional assessing officer is bad, however, the petitioner has participated in the said proceeding and an assessment order has been passed thereon. The aforesaid participation should not be construed as the petitioner submitting to the jurisdiction or the authority of the assessing officer to issue a notice under Section 148 of the said Act, subsequent to the Scheme being notified under Section 151A of the said Act.

3. This apart, she submits that the order passed under Section 148A(d) of the said Act for the relevant assessment year is beyond the statutory period and is barred by limitation. The proceeding thus, should fail.

4. Mr. Dhudoria, learned advocate appearing for the respondents at the very outset submits that the instant writ petition has been filed as and by way of an afterthought. Admittedly, the petitioner has participated in the said proceeding without raising the above issues. Today, after

the re-assessment order has been passed, though such order is an appellable order, the instant writ petition has been filed to somehow bypass the statutory remedy. According to him, this Court ought not to entertain this writ petition having regard to the alternative remedy provided for in the Scheme of the said Act.

5. Having heard the learned advocates appearing for the respective parties, though I am not inclined to entertain the writ petition on the ground that the notice under Section 148 of the said Act has been issued by the jurisdictional assessing officer at this belated stage, however, since an issue of limitation has been raised, I am inclined to examine the same.

6. It would transpire from the records that a notice under Section 148A(b) of the said Act dated 2nd March 2023 had been issued for the assessment year 2019-20 providing therein that the response to the same shall be filed on or before the 13th March 2023. Admittedly, time to file response had been extended till 27th March 2023 and as such, having regard to the submissions made by Ms. Roychowdhury with regard to the forth proviso of Section 149(1) of said Act (substituted by Finance Act 2021 w.e.f. 01.04.2021) since the order under Section 148A(d) was not passed within a period of 7 days from the extended period, the order is barred by limitation. To appropriately appreciate the scope and effect of third and fourth proviso of Section 149(1) of the said Act as amended by the Finance Act 2021 for the purpose of excluding the period of limitation in issuance of a notice under Section 148 or for

an order under Section 148A(d) of the said Act, as the case may be, as provided for in Section 149(1) of the said Act, the relevant section being Section 149(1) of the said Act along with its proviso is extracted hereinbelow:-

"[**149. Time limit for notice**

(1) No notice under Section 148 shall be issued for the relevant assessment year.—
(a) If three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
(b) If three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of –

i. asset;
ii. Expenditure in respect of a transaction or in relation to an event or occasion; or
iii. An An entry or entries in the books of account,

Which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

Provided that no notice under Section 148 shall be issued at the time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if [a notice under Section 148 or Section 153A or Section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of Sub-Section (1) of this section or section 153A or Section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

> Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly."

7. As would appear from the above primarily, upon issuance of a notice under Section 148A(b) of the said Act, while computing the period of limitation, the time or the extended time allowed to the assessee as per the show cause notice issued under Section 148A(b) of the said Act is excluded, in addition to the period during which the proceeding under Section 148A remains stayed by order or injunction of any Court. In addition to the above, having regard to the forth proviso, if after excluding the period provided for in the third proviso it transpires that the period of limitation available to the assessing officer for passing the order under clause (d) of Section 148A is less than 7 days, such remaining period shall stand extended to a further period of 7 days and the period of limitation under the sub-Section shall be deemed to be extended accordingly.

8. Admittedly, in this case, in terms of the notice issued under Section 148A(b) of the said Act the original period for filing the response was till 13th March 2023 which stood extended till 27th March 2023. Having regard to the third proviso contained in Section 149(1) of the said Act the assessing officer is entitled to the exclusion of the time provided for seeking response including the extended time therefor. Having regard thereto, in my view, the assessing

officer was entitled to exclusion of 25 days. Admittedly, the order impugned has been passed on 6th April 2023 and as such, there was no application of the fourth proviso at all.

9. In view thereof, the contention raised by Ms. Roychowdhury that the order passed under Section 148A(d) of the said Act is beyond the period of limitation, cannot be sustained. Since, the petitioner otherwise has an alternative remedy to challenge the order passed under Section 147 read with Section 144 and Section 144B of the said Act, I am of the view that the petitioner shall be at liberty to pursue his remedy before the statutory authority.

10. The above observations and findings are also in tune with an unreported judgment delivered by a Coordinate Bench of this Court in the case of ***Giriraj Commercial Private Limited versus Union of India and others (WPO 1122 of 2023)*** though the same pertains to the substituted provisions of Section 149(1) of the said Act as substituted by Finance Act, 2023.

11. This apart having regard to the fact that the instant writ petition was pending before this Court for sometime and since substantial questions in the form of limitation had been raised, I am of the view that the petitioner should be given an opportunity to pursue its statutory remedy.

12. Thus, in the event, the petitioner files an appeal within a period of 4 weeks from the date of receipt of the downloaded copy of this order from the official website of this Court, upon compliance of all formalities by the petitioner, the appellate authority shall hear out and dispose of the appeal on merit.

13. With the above observation and direction, the writ petition is disposed of.

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

(Raja Basu Chowdhury, J.)