11 12.11.2025

Ct. No. 551

Ab

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20671 of 2025

Kalyaneswari Properties (P) Limited
Vs.
The Union of India and others.

Mr. Shashwat Nayek,
Mr, Anirudhya Dutta.
... for the petitioner.

Mr. Prithu Dudhoria,
Ms. Aishwarya Rajayashree.
... for the Union of India.

1. This writ petition essentially assails an order dated April 7, 2024 passed under Section 148A(d) of the Income Tax Act, 1961 and the consequential notice under Section 148 of the said Act.
2. Learned Advocate appearing for the petitioner submits that assessment proceedings could not have been reopened by issuing the impugned notice under Section 148 of the said Act consequent upon an order under Section 148A(d) of the said Act inasmuch as approval accorded thereto by the specified authority under Section 151 of the said Act of 1961 precedes both the date of the order under Section 148A(d) as well as the notice under Section 148 of the said Act of 1961.
3. It is further submitted that the proceeding is barred by limitation under Section 149 of the said Act of 1961 since escapement of tax, even going by the respondent's assertion is below Rupees Fifty Lakh. It is submitted that an amount of Rs. 13,29,533/- has been factored in doubly to arrive at a total of Rs. 59,26,800/- for the purpose of bringing the petitioner's case within the period of limitation

under Section 149 of the said Act of 1961.

4. Having heard the learned Advocates appearing for the respective parties and having considered the material on record, this Court is of the view that no jurisdictional error or any other ground has been demonstrated which can pursuade this Court to exercise its discretion and entertain the writ petition under Article 226 of the Constitution of India.
5. The point that the notice and order are bad in law since approval granted to the impugned order and notice by the authority specified under Section 151 has preceded the order under Section 148A(d) of the said Act of 1961 and the notice under Section 148 of the Act is fit to be scotched immediately. It is evident from a plain reading of Section 148 and 148A of the Act itself that approval is to be granted prior to the issuance of such notice and order and, as such, there is no jurisdictional error in granting approval on April 6, 2024 and issuance of the impugned order and notice on April 7, 2024 (i.e. subsequent to grant of approval).
6. It is noticed that the sanctioning authority has recorded due satisfaction as regards the fitness of the case for passing of order under Section 148A(d) and issuance of notice under Section 148 of the said Act of 1961.
7. As regards the point that the proceeding is barred by limitation under Section 149 of the Act of 1961, this Court is of the view that the question raised is a mixed question of law and fact. The assertion that a certain sum has been factored in doubly can best be tested by the Assessing Officer and this Court should not venture into such factual arena under Article 226 of the Constitution of India.
8. It is also noticed that petitioner has approached

this Court after more than one year of the issuance of the notice and order impugned. There is no plausible explanation for the delayed approach. The writ petition is fit to be dismissed on that ground alone.

9. WPA 20671 of 2025 is therefore not entertained and is dismissed. The petitioner shall, however, be free to raise all points before the assessing officer, who shall consider the same in accordance with law.

(Om Narayan Rai, J.)