Form No. J.(2)
Item No. 05
Pallab/KS AR(Ct.)

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 14.01.2025

DELIVERED ON: 14.01.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. 1277 OF 2024
With
I.A. No. CAN 1 of 2024
Pushan Sengupta & Anr.
Vs.
Union of India & Ors.

Appearance:-
Mr. Anujit Mookherji
Mr. Prithwish Chandra ....**for the appellants**

Mr. Souman Nanda ....**for the respondents**

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioners is directed against the order dated September 9, 2024 in W.P.A. 17923 of 2024. In the said writ petition, the appellants had challenged an assessment order passed under section 147 read with section 144 and section 144B of the Income Tax Act (for brevity 'the Act') dated March 29, 2022 for the assessment year 2014-15.

2. The case of the appellants is that the firm was closed down in the previous assessment year and the question of reopening the assessment would not arise.

3. It is submitted by the learned advocate for the appellants that the firm in question commenced operations only after the financial year 2013-14

relevant to the assessment year 2014-15. Apart from that, the partners of the firm did not have adequate notice.

4. As could be seen from the facts recorded by the assessing officer, notice under section 142(1) of the Act was sent to the registered address by speed post and it is stated that the notice has been served and however, the assessee/partners did not respond. In any event, the order of re-assessment was passed in the year 2022 and the writ petition was filed in the year 2024. In our view, the issues raised by the appellants in this appeal as well as in the writ petition are not pure question of law but mixed questions of facts and law, which cannot be adjudicated in a writ petition based on affidavits.

5. Therefore, we are in full agreement with the findings rendered by the learned Single Bench refusing to entertain the writ petition. Accordingly, the appeal and the connected application are dismissed.

6. If the appellants file the statutory appeal before the appellate authority within a period of 30 days from the date of receipt of server copy of this order, the appeal shall be entertained without reference to limitation and shall be heard and decided on merits and in accordance with law.

7. No costs.

8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)