OD – 7

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/183/2025
NITIN AGARWAL
VS
INCOME TAX OFFICER, WARD 46(1), KOLKATA AND ORS

BEFORE :
HON'BLE JUSTICE RAJA BASU CHOWDHURY
DATE : 30th June, 2025.

Appearance :
Ms. Sutapa Roychoudhury, Sr. Adv.
Mr. Abhijat Das, Adv.
Ms. Aratrika Roy, Adv.
Mr. Anirban Chatterjee, Adv.
..for petitioner.

Mr. Prithu Dudhoria, Adv.
..for respondent.

1. Challenging the notice issued under Section 148 of the Income Tax Act, 1961 (in short, the "said Act"] and the order passed under Section 148A(d) both dated 29th December, 2023 for the assessment year 2019-20 including the assessment order under Section 147 of the said Act dated 4th February, 2025, and the demands raised on the basis thereof, the instant writ petition has been filed.

2. Ms. Roychoudhury, learned Senior Advocate representing the petitioner, would submit that since the notice under Section 148 of the said Act for the relevant assessment year has been issued by the jurisdictional assessing officer, the entire proceedings is a non-starter inasmuch as, according to her, consequent upon the scheme being notified in terms of Section 151A of the said Act, vide notification

dated 29th March, 2022, it is the faceless assessment unit which could have exercised such power. According to her, since the notice under Section 148 of the said Act is bad, the entirety of the proceedings including the order of assessment is vitiated on such ground and should be set aside.

3. Mr. Dudhoria, learned Advocate representing the department, would submit that the petitioner had earlier approached this Court challenging the order dated 13th April, 2023 issued under Section 148A(d) of the said Act in respect of the self-same assessment year by filing a writ petition which was registered as WP/1096/2023. Although, the writ petition was dismissed by an order dated 8th June, 2023 by a Co-ordinate Bench of this Court, the Division Bench by an order dated 13th October, 2023 while setting aside the order under Section 148A(d) on the ground of violation of principles of natural justice had remanded the matter back to the assessing officer by providing the petitioner with an opportunity of personal hearing, with liberty to file further objection with supporting documents. Pursuant to the aforesaid, a fresh order under Section 148A(d) of the said Act was passed on 29th December, 2023. Although, the petitioner had subsequently once again approached this Court by fling a writ petition challenging the same, such challenge of the petitioner did not ultimately succeed and by an order dated 21st June, 2024 the Division Bench of this Court had dismissed the appeal. The petitioner had thereafter participated in the assessment proceedings whereupon the order dated 4th February, 2025 was

passed. The aforesaid order under Section 147 of the said Act is an appealable order. Having regard thereto, according to him, no special case for interference having been made out, this Court ought to dismiss the writ petition.

4. Having heard the learned Advocates appearing for the respective parties and considering the materials on record, it prima facie appears that on the previous occasion the petitioner had approached this Court by filing a writ petition challenging the order under Section 148A(d) of the said Act dated 13th April, 2023. On such occasion though the petitioner could not succeed before the learned Single Judge, the Division Bench of this Court by its order dated 13th October, 2023 taking note of the case made out, permitted the petitioner to file further objection along with supportive documents and directed the jurisdictional assessing officer on receipt of the same to fix a date for personal hearing and to hear out the authorised representative of the petitioner. Pursuant to the aforesaid, the Jurisdiction Assessing Officer upon affording the petitioner with an opportunity of hearing had passed an order under section 148A(d) of the said Act dated 29th December, 2023. Challenging the said order the petitioner had once again approached this Court by filing a writ petition. Such challenge, however, did not succeed. Although an appeal was preferred which was registered as APO/64/2022, the Hon'ble Appellate Court had dismissed the said appeal by observing that the order passed by the learned Single Judge was perfectly justified in relegating the appellant to avail the remedy under

provisions of the said Act. The petitioner had since participated in the said proceedings. After conclusion of such proceedings the assessment order under section 147 of the said Act has been passed on 4th February, 2025 along with the consequential demand.

5. In the instant writ petition the challenge is not, however, limited to the assessment order. The petitioner once again seeks to challenge the notice under section 148 of the said Act. On this occasion, on the ground that the same was not issued by the Jurisdictional Assessing Officer, having regard to the scheme being notified in terms of section 151A of the said Act. Although, at the first blush, it would appear that the petitioner may have an arguable case, however, having regard to the fact that the petitioner had not raised such issue, had permitted the Division Bench of this Court to direct the Jurisdictional Assessing Officer to rehear the case upon affording opportunity of hearing and to pass a fresh order, and the Jurisdictional Assessing Officer having afforded such opportunity and the petitioner having availed the same by submitting to the Jurisdictional Assessing Officer and upon conclusion of hearing the Jurisdictional Assessing Officer having issued the notice under section 148, such exercise of jurisdiction by the Jurisdictional Assessing Officer, in my view, cannot be faulted.

6. Although, the provision of Order II Rule 2 of the Code of Civil Procedure may not strictly apply for a proceeding under Article 226 of the Constitution of India, however, having regard to the conduct of the petitioner in approaching this

Court and accepting the direction for the matter to be heard out by the Jurisdictional Assessing Officer, I am of the view, it shall not be appropriate for this Court to permit the petitioner to reopen such issue which has been closed at the instance of the petitioner. In view thereof, the challenge of the petitioner to a notice issued under section 148 of the said Act by the Jurisdictional Assessing Officer fails. However, taking note of the fact that the petitioner had a statutory remedy in a form of an appeal and as the writ petition has been pending before this Court since 11th March 2024, I am of the view, in the event the petitioner prefers an appeal before appellate authority within four weeks from date, the appellate authority having due regard to the observations made hereinabove, shall hear out the appeal and dispose of the same, subject to the compliance with all formalities.

7. The writ petition is accordingly disposed of.

(RAJA BASU CHOWDHURY, J.)

S.Das/R. Bose