OD–10

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/340/2025

KESORAM INDUSTRIES LIMITED
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX–CIRCULE 5(1),
KOLKATA & ORS.

BEFORE :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY
Date: 15th May, 2025

Appearance :
Mr. Devendra Jain, Adv.
Mr. Akash Chakraborty, Adv.
Mr. Bhaskar Sengupta, Adv.
…for the petitioner
Mr. Prithu Dudhoria, Adv.
…for the respondents

The Court :- 1. Challenging the notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') in respect of the assessment year 2019-20 dated 12th April, 2024 as also the assessment order passed under Section 147 dated 28th March, 2025, the instant writ petition has been filed. The petitioner is primarily aggrieved by the issuance of the notice under Section 148 of said Act by the jurisdictional assessing officer having regard to the provision contained in Section 151A of the said Act and the scheme notified thereunder on 22nd November, 2022.

2. Mr. Jain, learned Advocate appearing on behalf of the petitioner would submit that the aforesaid notice under Section 148 of the said Act having been issued by the jurisdictional assessing officer is bad in law and cannot be sustained. He would submit that the Hon'ble Supreme Court of India in connection with a Special Leave Petition (Civil) Diary No(s). 13266/2025 had by order dated 6th September, 2024 already restrained the department from passing

any adverse order against the assessee until further orders of the Hon'ble Supreme Court in the aforesaid matter.

3. By drawing attention of this Court to the show-cause notice dated 18th March, 2025, he would further submit that said notice had been issued de hors the Standard Operating Procedure (SOP) for faceless assessment under section 144B of the said Act, as circulated by the Central Board of Direct Taxes on 3rd August, 2022, which, inter alia, provides that the show-cause notice shall be issued by providing seven days' response time. This apart, it is submitted that all relevant documents were not supplied to the petitioner despite the petitioner requesting the respondents to supply the same.

4. Having heard the learned Advocates appearing for the respective parties, I may note that in the instant case, after issuance of the notice issued under Section 148 of the said Act in respect of the assessment year 2019-20 on 12th April 2023, the petitioner had participated in the assessment proceeding and an assessment order under Section 147 of the said Act has been passed on 28th March, 2025. Although Mr. Jain, learned Advocate, by placing before this Court the notice issued under Section 148 of the said Act, has submitted that the said notice is bad since the same has not been issued in accordance with section 151A of the said Act and the scheme notified by the Central Government, I am of the view that there has been no contemporaneous challenge in this regard by the petitioner. The petitioner participated in the proceeding, it is only after the assessment order has been passed, the petitioner has filed the writ petition. There is no explanation in the petition as to what prevented the petitioner from challenging the notice issued under Section 148 previously. Having regard thereto, I am of the view that the petitioner cannot be permitted to

challenge the said notice issued under Section 148 of the said Act by way of filing of writ petition after the assessment order has been passed.

5. On the issue of the petitioner not being afforded with appropriate opportunity to respond and there being infraction in complying with the SOP, I find that the petitioner relies on the SOP which has been circulated by the Commissioner of Income Tax, National Faceless Assessment Centre, Delhi vide a communication dated 3rd August, 2022, pertaining to faceless assessment under the provisions of Section 144B of the said Act. A perusal of clauses N.1.3.1 and N.1.3.2, of the aforesaid SOP it would transpire that although the ordinary response time for a show cause notice is seven days, however, the said SOP in itself embodies the power to curtail such period keeping in view the limitation date for completion of the assessment.

6. Admittedly, in this case, when the notice was issued, the limitation period was fast approaching, having regard thereto to a limited period was afforded to the petitioner for responding to the said show cause notice. The same cannot be said to be de hors the provisions of the SOP. This apart, the petitioner had duly responded to the said show cause notice within the time specified and did not raise any objection as regards non-compliance of SOP. The aforesaid contention made by the petitioner is an afterthought and cannot be accepted by this Court.

7. On the ground of non-supply of essential documents, I find that the petitioner has acknowledged to have received the copy of the excel sheet though the petitioner claims that some other documents were necessary for it to give appropriate response. I find most of the other allegations made by the petitioner go to the merits of the case. Ordinarily, an order passed under Section 147 of

the said Act, which is otherwise appealable, cannot form subject matter of challenge in a writ petition under Article 226 of the Constitution of India unless the party approaching the Court comes with a positive case of violation of the principles of natural justice, jurisdictional error, statutory infraction or any special case. This is not such a case where the extraordinary jurisdiction can be invoked especially when the petitioner has an efficacious alternative remedy. Accordingly, I am of the view that all the points raised by the petitioner in the writ petition can be heard and disposed of by the appellate authority if the petitioner chooses to prefer an appeal.

8. In view thereof, the writ petition fails and is, accordingly, dismissed.

9. There shall be no orders as to cost.

Later :

10. After the order has been passed, Mr. Jain would submit that since this Court is loath to accept the writ petition and is refusing to entertain the petition on the ground of alternative remedy, the petitioner should be afforded with some more time to approach the appellate authority. Considering the submission of Mr. Jain, and the advocates for the respondents, I am of the view that in the event the petitioner approaches the appellate authority within four weeks from the date, the appellate authority, having regard to the observation made herein and taking note of the fact that the writ petition was pending before this Court

for some time, shall hear out and dispose of the appeal on merits by deciding all points raised by the petitioner as expeditiously as possible.

11. All parties are to act on the basis of the server copy of this order duly downloaded from the official web-site of this Court.

(RAJA BASU CHOWDHURY, J.)

akg/