

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(ORIGINAL SIDE)**

Present:
The Hon'ble Justice Smita Das De

W.P.O. No. 416 of 2016

**M/s. J.M. Global Equities
Vs.
The Deputy Commissioner, Income Tax,
Circle 10 (1) Kolkata**

For the Petitioner : Ms. Manju Agarwal
: Mr. S.C. Tiwari
: Ms. Anju Manot
: Ms. Hitoshree Biswas

For the Respondent : Mr. Aryak Dutt

Reserved on : **01.08.2025**
Judgment on : **19.08.2025**

Smita Das De, J.:-

1. The instant writ Petition arises out of the reassessment proceedings for the Assessment Year 2010-11 under the provisions of Section 147/143(3) read with section 148 of the Income Tax Act, 1961 (hereinafter referred to as the said Act).
2. Apropos, the facts of the case is that the assessee filed its return of income to the tune of Rs. 29,56,452/- for the Assessment Year 2010-11 on September 10, 2010. The case was accordingly processed under Section 143(1) of the said Act. Subsequently the information

was received from the Directorate of Income Tax (Intelligence and Criminal Investigation) Kolkata (herein after referred to as DIT (INV) for the sake of brevity and convenience) about booking loss of Rs. 14,44,92,868/- by the assessee through client code modification. The said fact was brought to the notice of the said DIT (INV) during the spot verification and inspection conducted under Section 131(1A) of the said Act. The case was reopened by issuing notice under Section 148 of the said Act on March 23, 2015 after recording the reasons for reopening. The said reasons were communicated to the assessee upon request made for the same.

3. The notice under Section 143(2) of the said Act was issued accordingly on March 23, 2016. The petitioner raised an objection on March 12, 2016 against the issuance of the notice under Section 148 of the said Act but the same remained unconsidered. Being aggrieved by the actions of the respondents in not considering the objection, the petitioner had filed a Writ Petition on March 22, 2016 being No. W.P. 282 of 2016, for a declaration that the notice dated March 23, 2015 issued under Section 148 of the said Act is illegal and liable to be set aside. In the mean time on March 30, 2016 the respondent authorities passed the Assessment Order under Section 147/143(3) with an observation that;

“2.2. Meanwhile the assessee has filed a writ application before the Hon’ble High Court, Kolkata on 23.03.2016 vide

petition dated 22.03.2016 and requested not to pass any order u/s. 143(3)/147 of I.T. Act, 1961 till the disposal of Writ Petition finally by the Hon'ble Justice. A written request has also been received via email from Bajrang Manot, Advocate on Record of the assessee, on 29.03.2016 vide his written request dated 29.03.2016. The request of the assessee and his Advocate has been considered but can't be acceded to due to the limitation of time and in absence of injunction or stay order specifically in this case from the Hon'ble Justice of Calcutta High Court. However, it is respectfully submitted that the present order u.s. 147/143(3) of I.T. Act, 1961 shall be governed by the direction of Hon'ble Justice of Calcutta High Court at any point of time in future and will be the subject matter of all directives of the Hon'ble Court."

- 4.** Thereafter on April 05, 2016 the writ petition pending before this Hon'ble High Court was finally disposed of with a direction:-

"The concerned Deputy Commissioner to deal with the grounds indicated in the petitioner's letter of March 2, 2016 by a reasoned response to be communicated to the petitioner within four weeks from date. Upon the failure of such communication within the time indicated, the notice under Section 148 of the said Act will stand set aside. Upon the communication being made within the time permitted, it will

be open to the petitioner to take such appropriate steps as may be available to it.”

5. The order of assessment dated March 30, 2016 was communicated to the petitioner on April 9, 2016 without disposing of the petitioner's objection dated March 2, 2016. Being aggrieved by the said order of assessment dated March 30, 2016 the petitioner filed another Writ Petition which is the subject matter of challenge in the instant Writ.
6. Against the backdrop of the instant case the issue arises as follows :-
 - i. Whether the impugned Assessment Order is sustainable in the eye of law in the light of the order dated April 5, 2016 wherein the issuance of the Notice under Section 148 stands set aside due to non-compliance of the directions mentioned therein.
7. The Learned counsel for the petitioner submits that in terms of the order dated April 5, 2016 the respondent authorities did not give any opportunity of hearing to the petitioner for considering the objection raised vide letter dated March 2, 2016 . During the pendency of the said writ petition, the respondent authorities passed the Assessment order under Section 147/143(3) of the Act on March 30, 2016 and the same was communicated much later to the assessee i.e on April 9, 2016. It is submitted that by a letter dated March 23, 2016 a request was made to the authorities concerned not to pass any order under Section 143(3)/147 till the disposal of the writ petition pending

before this Hon'ble High Court. In reply thereto the respondent authorities intimated that the request could not be acceded to due to the point of limitation and secondly, there exists no orders specifically, restraining the authorities concerned in passing the order of assessment. It was further submitted that the Assessing Officer despite being aware of the pendency of the Writ Petition No. 282 of 2010 pending before this Hon'ble High Court, the order of assessment was passed hurriedly in order to save the limitation. In terms of the Order dated April 5, 2016 the respondent authorities failed to comply the same and also did not assign any reasons in the affidavit in opposition filed by the respondent authorities for such non compliance of the order.

- 8.** It was further submitted that since no appeal was preferred against the order dated April 5, 2016, thus the same has attained finality. The order of assessment dated March 30, 2016 cannot survive as the same has been passed on the strength of a notice which is under challenge. Therefore all recovery proceedings consequential to the assessment order dated March 30, 2016 and all demands raised in consequence thereof are also unenforceable and order of attachment of bank account, if any, is also liable to be cancelled and/or set aside. It was also submitted that at the time of passing the order of assessment the Writ Petition being WPO No. 282 of 2016 was pending for disposal. It was not brought to the notice of the Court

that the order of assessment was already passed on March 30, 2016 prior to the Order dated April 5, 2016. It was further relied upon an observation of the assessing officer in the order of assessment, that the order shall be governed by the direction of the Hon'ble High Court at any point of time in future and will be subject matter of directives of the Hon'ble Court.

9. Per contra, the Learned counsel for the respondent strenuously argued that the case of the petitioner was reopened only on the strength of an information received from the DIT(INV) Kolkata about booking loss of Rs. 14,44,92,868/- through Client Code Modification. The case was reopened by issuing Notice under Section 148 after recording the reasons for reopening and subsequently notice under Section 143(2) was also issued on March 23, 2016. The order of assessment was passed on March 23, 2016 at the assessed income of Rs. 14,74,49,320/- including the concealed income of Rs. 14,44,92,868/- due to disallowance of loss booked through Client Code Modification. It was further contended that though objection was raised against the notice issued under Section 148 of the said Act but the same could not be acceded to due to the same being time barring assessment and also the respondent authorities were not restrained by any order of injunction or stay to pass the order of assessment.

- 10.** In the conspectus of the above it clearly shows that the main ground of challenge is with regard to the order of assessment passed under Section 147/143(3) of the same Act, which dehors the terms mentioned in the order dated April 05, 2016 in WPO No. 282 of 2016. There was a specific observation to consider the representation dated March 2, 2016 by passing a reasoned order and communicate the same to the petitioner within a period of four weeks. Upon such failure of communicating within the time, the notice under Section 148 of the said Act, would stand set aside. In view of such the assessment order passed under Section 147/143 lacks jurisdiction and cannot survive since the same has been passed on the strength of a notice issued under Section 148 of the said Act which itself is bad, illegal and arbitrary and not sustainable in the eye of law as per the order dated April 5, 2016. It is a well settled proposition of law as poignantly held by the Hon'ble Apex Court in the case of **G.K.N. Driveshaft (India) Ltd. vs. Income tax Officer** reported in **2003 (01) SCC 72** which observed that,

“5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to

dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.”(Emphasis Supplied)

11. It is very pertinent to note that at the time of disposing of the Writ Petition No. 282 of 2016 the learned counsel for the respondents had failed and/or neglected to bring to the notice of the Coordinate Bench of this Hon’ble Court at the time of hearing the order of assessment which had already been passed on March 30, 2016. On the contrary the Assessing Officer observed in the Order of the Assessment, that the said order shall be governed by the direction of the Hon’ble Court at any point of time in future and shall abide by the directives of the Hon’ble Court. Such action of the respondent authority not acting in terms of the letter and spirit of the order dated April 5, 2016, is deprecated and unwarranted in the eye of law.
12. Thus in view of the above, the notice issued under Section 148 and order dated March 30, 2016, all other consequential proceedings relating thereto, including the order of bank attachment if any, are quashed and/or set aside.
13. However, it is made clear that any lackadaisical approach from the end of the revenue authorities are not warranted at all at any stage. Henceforth, the Revenue Department is expected to be more vigilant

and diligent before any Court of Law with regard to furnishing of adequate particulars and instructions to the departmental counsels for assisting the Court at the time of hearing. Any adverse order passed for want of instructions bears a cascading effect on the Department, prejudicing the interest of Revenue.

14. With the above observations and directions, the writ petition being **WPO No. 416 of 2016** is allowed and disposed of.
15. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

(Smita Das De, J.)