OD-02

WPO/489/2025
THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Swapanpuri Tradelink Private Limited
Versus
Union of India & Ors.

Before:
The Hon'ble JUSTICE RAJA BASU CHOWDHURY
Date: 28th August 2025

Appearance:
Mr. Rajarshi Chatterjee, Advocate
for the petitioner

Mr. Aryak Dutt, Advocate
Ms. Riya Kundu, Advocate
for the respondents

The Court: 1. Challenging the issuance of a notice under section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the said Act") dated 13th April 2024 for the assessment year 2017-18 the instant writ petition has been filed.

2. It is the petitioner's case that the petitioner was previously served with a notice under section 148 of the said Act on 26th July 2022 in respect of the self-same assessment year. In furtherance to the aforesaid notice, the petitioner had duly filed revised return on 26th August 2022. Later a notice under section 143(2) of the said Act was issued on 17th November 2022. The petitioner claims to have complied with such notice as well. Notwithstanding the above, without any further notice to the petitioner in relation to the above proceedings a notice under section 148A(b) of the said Act was issued on 28th February 2024 in respect of the self-same assessment year which ultimately culminated

in the order under section 148A(d) of the said Act dated 13th April 2025 and the notice under section 148 of the said Act.

3. Mr. Chatterjee, learned advocate representing the petitioner would submit that the subsequent notice issued under section 148 of the said Act is without jurisdiction. He would submit that as and by way of abundan caution the petitioner has filed a revised return pursuant to the subsequent notice under section 148 of the said Act. Since there is a jurisdictional error the entire proceeding stands vitiated. He would submit that once a notice under section 148 of the said Act was issued the entire proceedings are reopened and the prior assessment no longer exists, in support of his aforesaid contention reliance has been placed on a judgment delivered by a Division Bench of this Court in the case of *Principal Commissioner of Income Tax vs. Coal India Limited* reported in [2023] 146 Taxmann.com 546 (Calcutta). The petitioner prays for stay of operation of the further proceedings in connection with the notice issued under section 148 of the said Act dated 13th April 2024 for the assessment year 2017-18.

4. Mr. Dutt, learned advocate appears for the Income Tax Department. By placing a copy of the order dated 2nd April 2023, he submits that the National Faceless Assessment Centre (in short 'NFAC') has since dropped the previous proceedings initiated in furtherance to the notice issued under section 148 of the said Act dated 26th July 2022 for the assessment year 2017-18 on the ground that the case was initiated with wrong reasons or reasons of some other case. Accordingly, there is no irregularity on the part of the assessing officer in initiating the

fresh proceedings by issuing notice under section 148A(b) of the said Act which culminated in the order under section 148A(d) dated 13th April 2024. Based on the said order the notice under section 148 dated 13th April 2024 has been issued. Mr. Dutt further submits that the petitioner has already complied with the above notice under section 148 of the said Act and has filed a revised return and at this belated stage approached this Court as and by way of an afterthought. The above proceedings cannot be permitted to continue. No interference is called for.

5. Having heard the learned advocates for the respective parties, I find that although, Mr. Dutt would intend to file affidavit-in-opposition, in my view, no fruitful purpose would be served to permit the respondents to file affidavit as by an affidavit the respondents cannot improve the case. It is well settled that an order passed by an authority cannot be improved by an affidavit. In the instant case, the order based on which the proceedings under section 148 had been dropped is already on record and as such there is no scope for improve upon the same.

6. Having thus, noted the submissions of the learned advocates representing the respective parties and considering the materials on record, I am of the view that the above disclosure made by the respondents would demonstrate a complete non-application of mind on the part of the Jurisdictional Assessing Officer in initiating the proceedings at the first instance, since, NFAC has returned a finding that the proceeding was initiated with wrong reasons or reasons of some other case. Notwithstanding the above, NFAC appears to have issued a further direction to the Jurisdictional Assessing Officer to initiate fresh

proceedings. The above, in my view, is beyond the competence of the NFAC to direct issuance of a notice under section 148 of the said Act. In the instant case, the Jurisdictional Assessing Officer appears to have acted on the basis of the dictates of the NFAC as would corroborate from the order dated 2nd April 2023 as placed before this Court. In my view, the same is not permissible. The NFAC could not have directed the proceedings to be reopened afresh by the jurisdictional assessing officer. The aforesaid conduct appears to be case of dictation by the NAFC. In the instant case, the first notice under section 148 of the said Act for the assessment year 2017-18 had been issued on the basis of the order passed under section 148A(d) of the said Act dated 26th July 2022 which appears from the order dated 2nd April 2023, to be an erroneous order based on non-application of mind. Thus, the first notice under section 148 was a non-starter for reasons more fully appearing in the order dated 2nd April 2023. In view thereof, the subsequent proceedings initiated under section 148 for the self-same assessment year on fresh grounds at the dictation of NFAC, in my view, cannot be continued and are accordingly quashed.

7. Accordingly, the subsequent notice under section 148 of the said Act dated 13th April 2024 for the assessment year 2017-18 cannot be sustained and the same is quashed.

8. The writ petition is accordingly allowed.

9. There will be no order as to costs.

(RAJA BASU CHOWDHURY, J.)

R. Bose