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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

PRESENT :

THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM

And

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

APO/186/2023

IA NO: GA/1/2023

ADWEALTH STOCK BROKING PRIVATE LIMITED

VS

UNION OF INDIA AND ORS.

For Appellant : Mr. Pranit Bag, Advocate
Ms. Pooja Jewrajka, Advocate

For Respondent : Mr. Soumen Bhattacharjee, Advocate
Mr. Ankan Das, Advocate
Ms. Shradhya Ghosh, Advocate

Heard on : May 5, 2025

Judgment on : May 5, 2025

1. **T.S. SIVAGNANAM, CJ** : This intra-court appeal by the writ petitioner is directed against the order dated 14th August, 2023 in WPO No.1478 of 2023 by which the writ petition was dismissed giving liberty to raise all the points raised before the assessing officer in the course of the proceedings subsequent to the order passed under Section 148A(d) of the Income Tax Act, 1961 dated 19th April, 2023.
2. During the pendency of the proceedings the assessment has been completed and the assessment order has been passed on 13.03.2025 which is sought to be brought

on record by the appellant/assessee by way of a supplementary affidavit. This aspect would be considered in the later part of this judgment.

3. The assessee filed the writ petition challenging the order passed under Section 148A(d) on the ground that the assessing officer has sought to reopen the assessment in question on the very same ground and on the very same issue which is the subject-matter of the pending appeal in respect of the same assessment year wherein an appeal was filed before the Commissioner of Income Tax (Appeals) [CIT(A)] on 07.01.2019 challenging the assessment order dated 30.12.2018 passed under Section 143(3) of the Act. The learned Single Bench perused the grounds of appeal which have been filed before the CIT(A) and formed that the prima facie reasons set out in the notice issued under Section 148A(d) dated 25.03.2023 are different and, therefore, the contention raised by the assessee was not accepted. Apart from that, the learned Single Bench was of the view that there was no procedural irregularity committed by the assessing officer while issuing the notice under Section 148A(d) of the Act and, therefore, the writ court was not entitled to interfere with the order dated 19.04.2023.
4. Before us, Mr. Bag, learned advocate appearing on behalf of the appellant has raised certain other issues which appear to have not been canvassed in the writ petition in the same form as placed before us. Nonetheless, since we have elaborately heard the learned advocate for the appellant on the said submissions as well as the learned senior standing counsel for the revenue, we proceed to discuss the same and take a decision on those points which have been urged.

5. The first contention is that as against the order of assessment as passed under Section 143(3) dated 30.12.2018 the assessee filed statutory appeal before the CIT(A) on 07.01.2019 and several grounds were urged and the appeal is pending. During the pendency of the matter, the department filed a rectification application under Section 154 of the Act and an order was passed on 08.04.2019. Subsequent thereto, the assessee had filed an application under Section 154 of the Act for rectification on 13.04.2020 which is still pending and not disposed of. Several e-mails were sent to the assessing officer to decide such rectification application filed by the assessee. However, they were not favoured with any reply and, therefore, the assessee filed a grievance petition before the Grievance Redressal Authority and though it was stated that the matter is being looked into, nothing happened thereafter and, therefore, the notice issued under Section 148A(b) of the Act could not have been issued by the assessing officer.
6. The second contention is that a notice under Section 148 of the Act was issued on 27.03.2021 for which the assessee submitted three replies on 04.05.2021, 06.08.2021 and 24.09.2021 and also filed a return pursuant to the said notice and no decision was taken on the return and subsequently, a notice under Section 143(2) of the Act was issued on 23.11.2021 for which a reply was submitted on 08.12.2021 by the assessee. However, no orders were passed. Therefore, a notice under Section 148A(b) of the Act could not have been issued.
7. Apart from that, the other issues were raised in the reply submitted by the petitioner to the notice issued under Section 148A(b) of the Act which was not

considered in the proper manner and, therefore, the order passed under Section 148A(d) of the Act dated 19.04.2023 is vitiated.

8. In support of his contention, learned advocate for the appellant has referred to the decision in the case of Principal Commissioner of Income-tax -versus- Coal India Ltd., reported in (2023) 146 taxmann.com 546 (Calcutta) as well as the decision of the learned Single Bench of this Court in the case of Indian Tubes Co. Ltd. -versus- Income-tax Officer reported in (2005) 272 ITR 439 (Calcutta) and the Single Bench decision of the High Court of Karnataka in EIT Services India (P.) Ltd. -versus- Deputy Commissioner of Income-tax reported in (2024) 159 taxmann.com 424 (Karnataka) and also for the other propositions reliance was placed on the decision of the High Court of Bombay in Metro Auto Corporation -versus- Income-tax Officer and Others reported in (2006) 286 ITR 618 and the decision of the High Court of Delhi in Kamdhenu Enterprises Ltd. -versus- Income-tax Officer reported in (2023) 146 taxmann.com 417 (Delhi). Reference was also made to the decision of the Hon'ble Supreme Court of India in the case of M/s. S.M. Overseas Pvt. Ltd. -versus- Commissioner of Income Tax in Civil Appeal Nos.3612-3613 of 2012 dated 07.12.2022 for the proposition that during the pendency of the proceedings under Section 154 of the Act, it was not permissible on the part of the revenue to initiate the proceedings under Section 147/148 of the Act.
9. We have elaborately heard the learned senior standing counsel on the above submissions. The learned senior standing counsel has relied upon the decision in the case of T.S. Balaram, Income-tax Officer -versus- Volkart Brothers, reported in

(1971) 82 ITR 50 (SC); Commissioner of Income-tax -versus- Sardari Lal & Co., reported in (2002) 120 Taxman 595 (Delhi) and the decision of the Division Bench of this Court in Principal Commissioner of Income Tax, Kolkata-III, Kolkata -versus- M/s. West Bengal Fisheries Corporation Ltd. In ITA/71/2018 dated 21.05.2024 to explain the circumstances under which the power under Section 148A(d) of the Act could be invoked.

10. We have elaborately heard the learned Advocates for the parties and carefully perused the materials placed on record.
11. Before we go into the judgments, we need to be clear on the facts. The assessment was completed and an order under Section 143(3) was passed on 30.12.2018 and a consequential demand was also issued under Section 156 of the Act against which a statutory appeal is pending before the CIT(A). The department filed a rectification application and an opportunity was granted to the assessee to appear before the authority who sought to rectify the assessment as it was found that the addition on account of unexplained cash credit under Section 68 of the Act was wrongly adjusted with the business loss and the tax on addition under Section 68 is to be calculated as per the provisions of Section 115BBE which is required to be rectified. Despite opportune, the assessee did not respond and the assessing officer came to the conclusion that it is an inadvertent mistake which is apparent from the record and, accordingly, passed an order dated 08.04.2019 under Section 154 of the Act. Thereafter, the assessee filed an application for rectification on 13.04.2020 requesting the assessing officer to rectify the rectification order dated 08.04.2019 by

allowing set off loss against addition under Section 68 read with Section 115BBE of the Act. As rightly pointed out by the learned senior standing counsel for the revenue, the prayer sought for in the application filed by the assessee for rectification of the rectification order dated 08.04.2019 is a contention which is raised on the merits of the matter and it is doubtful as to whether at all prayer is maintainable under Section 154 of the Act. However, we find that certain other facts which have come to our notice would make this issue academic in the case on hand. We say so because the notice issued under Section 148 of the Act dated 27.03.2021 was on certain grounds and the assessee sought for reasons by representation dated 04.05.2021 filed return of income and subsequently also filed their reply dated 06.08.2021, copy of the said reply is annexed at page 146 of the stay petition and on a reading of the same, we find that the reply is by referring to certain legal issues and decisions and circular of the CBDT and nothing appears to have been stated on merits. Nonetheless, no order was passed under Section 147 of the Act as proposed in the notice dated 27.03.2021. The question would be whether the notice under Section 148A(b) of the Act dated 25.03.2023 which was challenged by the assessee after the order was passed under Section 148A(d) dated 19.04.2023 was maintainable on the aforementioned grounds raised by the learned Advocate for the appellant. To get an answer we have perused the notice issued under Section 148A(b) dated 25.03.2023 and we find that the information was received by the department in the insight portal regarding search and seizure action under Section 132 of the Act carried out in the business and residential premises of one

Kailash Kumar Pattowari and his key persons and entities controlled and managed by Kailash Kumar Pattowari on 8.3.2022.

12. The reasons as set out in the said notice dated 25.3.2023 is by alleging that the assessee is a beneficiary of transactions accommodated by Kailash Kumar Pattowari. Thus, we find the reasons which have been set out for initiating the proceedings under Section 148A(b) are completely different and has no bearing upon in any of the proceedings which are pending or was disposed of. Therefore, the department was well within their jurisdiction to issue notice under Section 148A(b) of the Act and thereafter proceeded to pass order under Section 148A(d). So far as the decisions which have been referred to by the learned advocate appearing for the appellant/assessee which is suffice to note the earliest of the decisions of the Hon'ble Supreme Court in the case of CIT -versus- S. Raman Chettiar, reported at [1965] 55 ITR 630 (SC) which decision has been followed in the case of Indian Tubes Co. Ltd. and also noted in EIT Services India (P.) Ltd. In the said case the decision was to the effect that when a notice under Section 148 of the Act is issued, the original assessment proceedings are entirely opened up or left open and the finality which had occurred in the first assessment order does not exist any longer. Therefore, it was held that without disposing of the return of income filed by the assessee in response to the first notice, the assessing officer could not have issued a second notice for reopening of the assessment which, at the relevant point of time, did not exist in the eye of law. To the same effect with the decision of the Hon'ble Supreme Court of India in M/s. S.M. Overseas Pvt. Ltd., in our considered view,

these decisions can be of no assistance to the case of the assessee as on facts we find that no proceedings under Section 148A(b) of the Act was initiated pursuant to the search and seizure operations which were conducted against the abovenamed person and his entities and the allegation is that the assessee was a beneficiary. Therefore, we are of the view that the reopening proceedings would not suffer from any jurisdictional error for the writ court to interfere in exercise of its powers under Article 226 of the Constitution of India. At this juncture, it would be relevant to take note of the decision in *Sardari Lal & Co.*, wherein the Hon'ble Division Bench held that whether the question of taxability of income from a new source of income is concerned, which had not been considered by the assessing officer, the jurisdiction to deal with the same in an appropriate cases may be dealt with under Section 147/148 and under Section 263 of the Act, if requisite conditions are fulfilled.

13. With regard to the assessment order which is sought to be brought on record by the assessee by way of a supplementary affidavit dated 20.03.2025, we are unable to entertain any challenge to the assessment order for the reasons which have set out in the preceding paragraphs and it will be well open to the assessee to work out his rights and remedies available under the provisions of law.
14. Thus, for the above reasons, we find no grounds to interfere with the impugned order. Accordingly, the intra-court appeal stands dismissed and the connected application stands closed.

15. After the above judgment and order was dictated, the learned advocate for the appellant submitted that the appellant is desirous of preferring a statutory appeal as against the assessment order and if an appeal is filed as of now, the same would be barred by time. Considering the fact that the matter was heard and decided today, we do not wish to foreclose the rights and remedies available to the assessee and, therefore, we grant thirty days time from the date of receipt of the server copy of this judgment and order for the assessee to prefer an appeal before the appellate authority. If such appeal is preferred within the time permitted, the appeal shall not be rejected on the ground of limitation.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)

