

OD – 4

ORDER SHEET
WPO/578/2019
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MESSRS. ELITE PHARMACEUTICALS AND ANR.
VS
INCOME TAX OFFICER, WARD 22(2), KOLKATA

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 11th January, 2023

Appearance:
Mr. R.N. Dutt, Adv.
Ms. Sutapa Roy Choudhury, Adv.
Ms. Aratrika Roy, Adv.
...For the Petitioner

Mr. Soumen Bhattacharjee, Adv.
...For the respondent

The Court : Heard learned advocates appearing for the parties.

A short question of law involved in this writ petition is that whether a second notice under Section 148 of the Income Tax Act, 1961 issued by the assessing officer after the expiry of one year as per Section 153(6)(i) is valid without disposing the return filed to the first notice issued under Section 148 of the Income Tax Act for the very same assessment year. Here admittedly in this case returns in response to notices under Section 148 of the Act and objections against the same relating to two relevant assessment years 2012-13 and 2013-14 and were not disposed of by passing final reassessment order on the same as per order passed in earlier Writ Petition, within the period of limitation prescribed under Section 153(6)(i) of the Act and without disposing the same, the assessing officer in violation of the statutory provision by not making final assessment on the first

notices, issued second notices under Section 148 of the Act relating to the same assessment years, which is not permissible under the law. Learned advocate appearing for the petitioner relies on an unreported decision of a Division Bench of this Court dated 13th December, 2022 of ITAT 187 of 2022 (Principal Commissioner of Income Tax – Kolkata-2 vs. M/s. Coal India Ltd.) where inter alia a similar question of law was involved and the Court held in favour of assessee, relevant portion of the said judgment is as follows :

“The short issue which arises for consideration in the instant appeal is whether the Assessing Officer could have issued a second notice under Section 148 of the Act when the assessee had filed his return of income in response to the first notice issued under Section 148A and such return was not disposed of. This question of law has been answered in several decisions and one of the earliest decisions is in the case of S. Raman Chettiar vs. CIT reported in (1961) 42 ITR 700, wherein the Court held that when a return is furnished by the assessee in consequence of a notice issued under Section 34 of the Income Tax Act, 1922, it was not open to the Income Tax Officer to ignore that return and issue a further notice under Section 34(1)(a) on the assumption that there had been an omission or failure on the part of the assessee to make return of his income. This decision was affirmed by the Hon’ble Supreme Court in the Commissioner of Income Tax, Madras vs. S. Raman Chettiar, (1965) 55 ITR 630. There is also a decision of the High Court of Allahabad to the same effect in the case of Commercial Art Press vs. Commissioner of Income Tax,

reported in (1978) 115 ITR 876. The aforementioned decisions were followed in the case of A.S.S.P. & Co. vs. CIT reported in 1986 SCC OnLine Mad 317. Further, a learned Single Bench of this Court has decided an identical issue in the case of The Indian Tube Co. Ltd. vs. Income Tax Officer, reported in 2004 SCC OnLine Cal 362. The underlying legal principle is 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, 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.”

Mr. Bhattacharjee representing the respondent Income Tax Authority defending the issuance of second notices under Section 148 of the Act relating to same assessment year submits that assessing officer can issue second notice under Section 148 of the Act without withdrawing the first notice or passing any final assessment order on return in response to the first notice if the time to issue notice under Section 148A which is six years from the date of relevant assessment year has not expired. Such argument is not acceptable to this Court in view of the provision under Section 153(6)(i) of the Income Tax Act and the decision of the Division Bench of this Court in Coal India Ltd.(supra).

Considering the facts and circumstances of the case as appears from record, relevant provision of law under Section 153(6)(i) of the Income Tax Act, 1961, and the judgment of the Division Bench of this Court in the case of Indian Table Co. Ltd. (supra), I am of the considered opinion that the respondent assessing officer concerned was not justified in law in issuing impugned second notices under Section 148 of the Income Tax Act, 1961, relating to the same assessment years instead of completing the assessment on returns filed in response to the first notices under Section 148 of the Act after disposing the objection filed by the petitioner by passing a reasoned and speaking order as per earlier order/direction of this Court in earlier writ petition remanding the matter back to the assessing officer. Action of the assessing officer allowing the expiry of period of limitation of one year to complete the assessment as per Section 153(6)(i) of the Income Tax Act, 1961, from the date of order of this Court in earlier writ petition on the first notices under Section 148 of the Act relating to same assessment year and issuing second notice in respect of the very same assessment year is not legal and valid.

In view of the reasonings and discussion made above the impugned second notices under Section 148 of the Income Tax Act, 1961, relating to assessment years 2012-13 and 2013-14 and all subsequent proceedings are quashed.

With these observations and directions, this writ petition being WPO 578 of 2019 is disposed of.

(MD. NIZAMUDDIN, J.)