

M/L 45
21.05.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10387 of 2024

SCI India Limited
Versus
The Income Tax Officer, Ward 8(2), Kolkata, & Ors.

Mr. Vinay Shraff
Mr. Dev Kumar Agarwal
... For the petitioner.

Mr. Tilak Mitra
... For the respondents.

1. The present writ petition has been filed, inter alia, questioning the jurisdiction and/or authority of the jurisdictional officer to issue the notice dated 26th April, 2023 under Section 148 of the Income Tax Act, 1961 as amended by Finance Act, 2021, (hereinafter referred to as the “said Act”).

2. Mr. Shraff, learned advocate representing the petitioner, by placing before this Court the first and the fifth proviso to Section 149 of the said Act, submits that no notice under Section 148 of the said Act can be issued in respect of the assessment year 2016-17, beginning on or before 1st April, 2021 in terms of the amended provisions of Section 149 of the said Act. According to him since, the proceeding relates to the assessment year 2016-17, the issuance of notice under Section 148 of the said Act shall be in accordance with the un-amended

provisions of Section 149 of the said Act, as it stood immediately before the commencement of the Finance Act, 2021.

3. Independent of the above, by placing before this Court the notice dated 29th March, 2021, issued under Section 148 of the said Act, in respect of the assessment year 2016-17 it is submitted that since, reassessment proceeding had commenced pursuant to the aforesaid notice dated 29th March, 2021 and the same having already been concluded by passing the assessment order dated 30th March, 2022 read with Sections 144 and 147 of the said Act, no further notice under Section 148 of the said Act, in respect of the selfsame assessment year could have been issued on the petitioner. In support of his contention he has placed reliance on a judgment delivered by the Hon'ble High Court of Delhi at New Delhi in the case of ***Kamdhenu Enterprises Ltd. v. Income Tax Officer***, reported in **(2023) 146 taxmann.com 417 (Delhi)**. Having regard to the aforesaid, it is submitted that the subsequent notice issued under Section 148 of the said Act dated 26th April, 2023 for the assessment year 2016-17 is without jurisdiction, nonest and should be quashed.

4. Mr. Mitra, learned advocate enters appearance on behalf of the respondents and prays for leave to use

affidavit-in-opposition to the present writ petition.

5. Having regard to the aforesaid, considering the fact that no second notice under Section 148 of the said Act in respect of the assessment year 2016-17 could have been issued and further taking note of the amended provisions of Section 149 of the said Act, including the jurisdictional issue involved, I am of the view that the writ petition should be heard. Further since, the petitioner has been able to make out a *prima facie* case, all further proceeding in connection with the notice issued under Section 148 of the said Act, for the assessment year 2016-17 dated 26th April, 2023 shall remain stayed till the end of September, 2024 or until further orders, whichever is earlier.

6. Let affidavit-in-opposition to the present writ petition be filed within a period of three weeks after the summer vacation. Reply thereto, if any, be filed within two weeks thereafter.

7. List this matter in the Combined Monthly List of July, 2024.

(Raja Basu Chowdhury, J.)