(2023) 08 CAL CK 0066

In the Calcutta High Court

Case No : WPA No. 13960 Of 2023

Manab Paul — APPELLANT

Vs

Union Of India & Ors. — RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:

Income Tax Act, 1961 — Section 148, 148A(a), 148A(b), 148A(d)

Citation : (2023) 08 CAL CK 0066

Hon'ble Judges : Md. Nizamuddin, J

Bench : Single Bench

Advocate : Sabyasachi Mondal, Ananda Sen, Soumen Bhattacharya

Final Decision : Dismissed

Judgement

Md. Nizamuddin, J

Heard learned advocates appearing for the parties.

By this Writ Petition, petitioner has prayed for relief of direction upon the respondent assessing Officer concerned prohibiting him from giving effect to the impugned enquiry notice under Section 148A(a) of the Income Tax Act, 1961 dated 17th March, 2023 which had already been given effect to long back and the subsequent show-cause notice issued under Section 148A(b) of the Act dated 22nd March, 2023 and the order passed under Section 148A(d) of the Act dated 25th April, 2023 and subsequent notice under Section 148 of the Act dated 26th April, 2023 and approached this writ Court at this stage after going on participating in the proceeding at every stage.

Facts as appears from records/documents annexed to the writ petition filed by the petitioner himself are as follows:

(a) A notice for enquiry under Section 148A(a) of the Income Tax Act, 1961 was issued on 17th March, 2023 relating to Assessment Year 2019-20 by which petitioner was asked to furnish explanation with supporting documents relating to certain transactions referred in the said notice, on or before 21st March, 2023.

(b) Petitioner did not respond to the aforesaid notice under Section 148A(a) of the Act by filling or submitting any explanation with any supporting documents. The Assessing Officer concerned issued a notice on 22nd March, 2023 under Section 148A(b) of the Act after getting no response from the petitioner against the aforesaid notice under Section 148A(a) of the Act. By the aforesaid notice dated 22nd March, 2023 along with annexure, petitioner was asked to file his reply with supporting documents on or before 10th April, 2023.

(c) It appears from record that in response to the aforesaid notice under Section 148A(b) of the Act dated 22nd March, 2023, petitioner submitted his explanation with supporting documents on 8th April, 2023 but petitioner did not ask for any personal hearing. It also appears from record that the Assessing Officer concerned considering the aforesaid response/reply, passed order under Section 148A(d) of the Act on 25th April, 2023 and on perusal of the aforesaid impugned order under Section 148A(d) of the Act it appears that the Assessing Officer in his aforesaid order has recorded the objection/reply of the petitioner dated 8th April, 2023, and made discussion in detail and after verification from records which was available to the Assessing Officer including the details of the assets and liabilities submitted by the petitioner himself as has been recorded in Paragraph 4.1 of the aforesaid order under Section 148A(d) of the Act relating to assessment years 2018-19 and 2019-20. Though petitioner has alleged that the assessing officer in his impugned order which relates to assessment year 2019-20 has considered material relating to assessment year 2018-19 in the impugned proceeding in spite of the admitted fact as appears from record that petitioner himself has filed some details relating to assessment year 2018-19 and it is not that the assessing officer out of his own has given reference to the assessment year 2018-19 in the impugned order under Section 148A(d) of the Act.

In support of his contention in challenging the impugned notice and order, petitioner has relied on an unreported decision of this Court dated 9th June, 2023 in the case of Rajesh Kumar Agarwal –Vs- Union of India & Ors. in MAT No. 857 of 2023. On consideration of the aforesaid unreported decision I find that the same is distinguishable and is not applicable to the facts and circumstances of the present case.

In the said case there was allegation of violation of principles of natural justice by not providing any opportunity of personal hearing to the petitioner and further in the said case the Assessing Officer had recorded that no response was submitted by the Assessing Officer while from record it had appeared that the petitioner had actually submitted response. Furthermore, in the said order no notice under Section 148A(a) of the Act was set aside.

Petitioner has also relied on an unreported decision of the Hon'ble Patna High Court in the case of Alkem Laboratories Limited –vs- Principal Commissioner of

Income Tax-1 (8343 of 2022). The said case is also distinguishable in the facts and circumstances of the present case since in the present case petitioner did not co-operate with the respondent Assessing Officer by not filing any response/ reply to the notice of enquiry under Section 148A(a) of the Income Tax Act, 1961.

Petitioner has also relied on a decision of the Hon'ble Division Bench of this Court in the case of Ashiana Housing Ltd. –Vs- Union of India reported in [2023] 149 tamann.com 275 (Calcutta). The said case is also distinguishable from the facts of the present case since in the said case learned Single Bench of this Court had not entertained the writ petition on the ground of availability of alternative remedy against the order under Section 148A(d) of the Act, while in the present case petitioner has challenged the impugned notice under Section 148A(a) of the Act by attempting to make out a case that no enquiry was conducted under Section 148A(a) of the Act before issuance of notice under Section 148 of the Act but admitted fact is that notice of enquiry under Section 148A(a) of the Act was issued to the petitioner which the petitioner did not respond and furthermore in the said decision the notice under Section 148A(a) of the Act was not the subject matter of challenge and further the aforesaid order is an interim order considering the facts and circumstances involved in the said case which is different from the present case.

In addition, none of the decisions cited by the petitioner is applicable in the facts and circumstances of the instant case.

Considering the facts and circumstances of the case as appears from record and as discussed hereinabove, now at this stage after passing of the impugned order under Section 148A(d) and issuance of notice under Section 148 of the Act, petitioner intends to challenge the impugned notice under Section 148A(a) of the Act against which he had chosen to not to give any response to the same which is matter of record, does not deserve interference.

In the facts and circumstances of the instant case, in my considered opinion one order of the Hon'ble Supreme Court dated 2nd September, 2022 in the case of Anshul Jain –Vs- Principal Commissioner of Income Tax and Anr. (Special Leave to Appeal (C) No(s). 14823/2022) is very relevant which is quoted herein below:

"What is challenged before the High Court was the re-opening notice under Section 148A(d) of the Income Tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

Under the circumstances, the High Court has rightly dismissed the writ petition.

No interference of this Court is called for.

The present Special Leave Petition stands dismissed.

Pending applications stand disposed of."

Considering the facts and circumstances of the case, judgments relied upon by the petitioner, the aforesaid judgment of the Hon'ble Supreme Court and in view of the discussion made above I am not inclined to entertain this writ petition since in my considered view the impugned notice under Section 148A(a) of the Act and the aforesaid impugned order under Section 148A(d) of the Act and subsequent notice under Section 148 of the Act is neither without jurisdiction nor the same are contrary to any specific provision of law nor there is any procedural irregularity in the impugned proceeding nor the same are in violation of principle of natural justice. Furthermore, admitted factual position which cannot be ignored is that before passing the impugned order under Section 148A(d) of the Act and issuing notice under Section 148 of the Act, as per Section 148A of the Act, the Assessing Officer had issued a notice under Section 148A(a) of the Act which the petitioner himself had chosen to not to give any reply/response to the same and thereafter notice to show cause under Section 148A(b) of the Act was issued to give reply to the same and in fact, the petitioner has given the reply to the same which was considered in detail and a reasoned and speaking order under Section 148A(d) of the Act was passed on the basis of material facts and evidence appeared from the records which were available to the Assessing Officer.

In view of the discussion made above, this writ petition being W.P.A No. 13960 of 2023 is dismissed. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.