(2022) 08 TEL CK 0019

In the Telangana High Court

Case No : Writ Petition No. 31574 Of 2022

Orusunnissa Begum APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 04-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148, 148A, 148A(b), 148A(d), 149(1)(b)(iii)

Citation : (2022) 08 TEL CK 0019

Hon'ble Judges : Ujjal Bhuyan, CJ;C.V.Bhaskar Reddy, J

Bench : Division Bench

Advocate : Dundu Manmohan , J V Prasad

Final Decision : Dismissed

Judgement

1. Heard Mr. Dundu Manmohan, learned counsel for the petitioner and Mr. J.V.Prasad, learned Standing Counsel for Income Tax Department appearing for the respondents.

2. This writ petition has been filed under Article 226 of the Constitution of India assailing the order dated 30.06.2022 passed by respondent No.1 under Section 148A(d) of the Income Tax Act, 1961 (briefly, ‘the Act’ hereinafter) for the assessment year 2013-14.

3. Petitioner is an assessee under the Act. But it is contended that as her taxable income fell below the exemption limit, she did not file return for the assessment year under consideration.

4. Be that as it may, notice under Section 148 of the Act was issued by respondent No.1 on 08.06.2021. Supreme Court in Union of India v. Ashish Agarwal1 has held that though the notice under Section 148 of the Act was issued post 01.04.2021, such notices shall be construed to be notices under Section 148A of the Act, whereafter assessees were given liberty to submit their show cause reply. Upon reply submitted by the petitioner, respondent No.1

passed the impugned order holding that objection of the assessee on monetary limit cannot be sustained. It was further held that it is a fit case for issuance of notice under Section 148 of the Act. This order he has passed after obtaining prior approval of respondent No.2, whereafter notice under Section 148 of the Act has been issued.

5. Basic contention of learned counsel for the petitioner is that in the objection to the notice issued under Section 148A(b) of the Act, petitioner has raised various grounds, including the ground that the alleged escaped income would be much less than Rs.50.00 lakhs and in terms of Section 149(1)(b)(iii) of the Act, respondent No.1 would not have the jurisdiction to proceed further.

6. We have carefully considered the objection raised by the petitioner and the order passed by respondent No.1 on 30.06.2022. At this stage we may point out that the scheme of Section 148A of the Act is to provide opportunity of notice and hearing to the assessee before formal notice under Section 148 of the Act can be issued. In other words, a proceeding under Section 148A(d) of the Act is at a stage prior to issuance of statutory notice under Section 148 of the Act. Therefore, the impugned order has been passed at a stage even prior to the interlocutory stage.

7. We may mention that as provided under Section 148 of the Act, petitioner would have a host of remedies to put up her defence, including the contention that present one is not a fit case for proceeding under Section 147 of the Act in view of the jurisdictional embargo under Section 149(1)(b)(iii) of the Act. All these aspects can be raised by the petitioner in her reply to the notice under Section 148 of the Act. The assessing authority would be under an obligation to deal with such objection raised. But having regard to the scheme of Section 148A of the Act and the decision rendered by the Supreme Court in Ashish Agarwal’s case (supra), we are not inclined to entertain the writ petition and interdict the proceedings of the respondents under Section 148 of the Act at this stage.

8. Consequently, leaving all contentions open to the petitioner we decline to entertain the writ petition.

9. Writ petition is accordingly dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

