

WPO/244/2021

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

BAGARIA PROPERTIES AND INVESTMENTS PRIVATE LIMITED & ANR.

VS

UNION OF INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date: 15th July, 2021.

(Via Video Conference)

Appearance:

Mr. Pranit Bag, Adv.

Mr. Anuj Mishra, Adv.

Md. Wasim Akram, Adv.

..for the Petitioners.

Mr. Asok Bhowmik, Adv.

..for Respondents.

The Court:-In this matter petitioners have challenged the impugned notices dated 29th May, 2021 and 18th June, 2021 relating to assessment years 2014-15 and 2015-16 respectively under Section 148 of the Income Tax Act, 1961 on the ground that before issuing notice under Section 148 of the Act, mandatory provisions of Section 148A of the Act which cast statutory obligation on the Assessing Officer to comply the provisions of the same before issuing any notice under Section 148 of the Act has not been complied with by the Assessing Officer.

Petitioners have also challenged the constitutional validity of the provisions of The Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020.

Mr. Bag, learned Advocate appearing for the petitioners in support of his contention has relied on two unreported decisions of the Hon'ble Bombay High Court, one decision is in WP (L) No.11766 of 2021 dated 3rd June, 2021 in the

case of Armada D1 Pte. Ltd. Vs. The Deputy Commissioner of Income Tax Int-Tax Circle 1(1) (2) & Ors. and unreported decision in WP No. 1334 of 2021 dated 5th July, 2021 in the case of Tata Communications Transformation Services Limited Vs. Assistant Commissioner of Income Tax 14(1) (2), Mumbai & Ors. He has also relied on one reported decision of Hon'ble Bombay High Court in WP(L) No. 14687 of 2021 in the case of Sahil International Vs. Assistant Commissioner of Income Tax, Circle-19(3) & Ors. reported in [2021] 128 taxmann.com 161 (Bombay) dated 9th July, 2021 and one unreported decision of Hon'ble Delhi High Court in W.P.(C) 6176 of 2021 in the case of Mon Mohan Kohli Vs. Assistant Commissioner of Income Tax & Anr. dated 7th July, 2021.

In all these aforesaid cases Hon'ble Courts have stayed the impugned notices under Section 148 of the Income Tax Act, 1961 for non compliance of the provisions of Section 148A of the Act. I had given an opportunity to Mr. Asok Bhowmik, learned Advocate appearing for the respondents to take instruction in the matter by my order dated 13th July, 2021. Today, when he was asked about the instruction pursuant to my aforesaid direction in this matter he simply made prayer for adjournment on the ground of learned Additional Solicitor General and could not submit anything about the aforesaid judgements relied on by the petitioners or on the facts of this case as to whether in this case before issuing notice under Section 148 of the Act, provisions under Section 148A was complied with or not. Mr. Bhowmik says that officer concerned has asked for further time and was not able to deny the allegations of the petitioners that Section 148A provisions of the Income Tax Act, 1961 was not complied with in this case before issuing notice under Section 148 of the said Act and was not able to distinguish the aforesaid unreported decisions.

Considering the submissions of the parties, I direct the respondents to file affidavit-in-opposition within six weeks from date. Petitioners to file reply thereto, if any, within two weeks thereafter. List the matter after eight weeks (i.e. 09.09.2021) for “Final Hearing.”

In the meanwhile, respondents are restrained from proceeding any further on the basis of the aforesaid impugned notices dated 29th May, 2021 and 18th June, 2021 being Annexures ‘P-4’ and ‘P-5’ to the writ petition.

(MD. NIZAMUDDIN , J.)