

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/412/2024

Manaksia Steel Limited
Versus
Assistant Commissioner of Income Tax,
Circle 1(1), Kolkata & Ors.

BEFORE

The Hon'ble Justice RAJA BASU CHOWDHURY

Date: 1st August, 2024.

Mr. Abhrotosh Majumdar, Sr. Adv.
Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
Mr. Navin Mittal, Adv.
...for the petitioner
Mr. Soumen Bhattacharjee, Adv.
Ms. Doyel Dey, Adv.
...for the respondents

THE COURT: 1. The present writ petition has been filed, inter alia, challenging the notice dated 24th April, 2024 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") in respect of the assessment year 2017-18 including the notice dated 16th February, 2024 issued under Section 148 A(b) of the said Act and the order dated 24th April, 2024 issued under Section 148A(d) of the said Act.

2. Mr. Majumdar, learned senior advocate appearing on behalf of the petitioner by drawing attention of this Court to the order of approval

granted under Section 151 of the said Act dated 24th April, 2024 for the assessment year 2017-18, submits that although the approval was for a sum of Rs.819,02,475/- being the quantum of income which had allegedly escaped assessment, however, the order passed under Section 148A(d) of the said Act would reflect that the jurisdictional assessing officer had determined that a sum of Rs.611,83,64,862/- had escaped assessment within the meaning of Section 147 of the said Act and proceeding on such premise had decided the matter to be a fit case for reopening of the assessment after issuing notice under Section 148 of the said Act. The aforesaid order also records that the same was passed with the approval of the specified authority under Section 151 of the said Act. However, since the approval is only limited to Rs.819,02,475/-, the aforesaid order passed under Section 148A(d) of the said Act is de hors the sanction and cannot be sustained. He also urges the point of limitation by making a reference to Section 148A(d) of the said Act.

3. By referring to the notice issued under Section 148 of the said Act, it is submitted that though in terms of Section 151A of the said Act read with the notification dated 29th March, 2022, such notice was required to be issued through the automated allocation, in accordance with risk management strategy formulated by the Board as referred to in Section 148 of the said Act, for issuance of notice, in a faceless manner, to the extent provided in Section 144B of the Act with reference to making assessment or re-assessment of total income or loss of the assessee, the same has, in fact, been issued by the jurisdictional assessing officer. As such, further proceedings on the basis of a *non est* notice should not be permitted to

continue. He prays for stay of operation of all further proceeding in connection with the notice dated 24th April, 2024 issued under Section 148 of the said Act for the assessment year 2017-18.

4. Mr. Bhattacharjee, learned advocate enters appearance on behalf of the respondents and seeks leave to file affidavit in opposition.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record since the petition raises jurisdictional issue, I am of the view that the writ petition should be heard upon exchange of affidavits.

6. Let affidavit in opposition to the present writ petition be filed within six weeks from date; reply thereto, if any, be filed within four weeks thereafter.

7. Taking into consideration the prima facie case as has been made out by the petitioner and the judgement of the Division Bench of this Court presided over by the Hon'ble the Chief Justice *in the case of Girdhar Gopal Dalmia vs. Union of India & Ors., in MAT/1690/2023 on 25th September, 2023*, whereby the Hon'ble Division Bench while considering the competence of the jurisdictional assessing officer to issue a notice under Section 148 of the said Act, consequent upon publication of the Scheme vide Notification dated 29th March, 2022, and while admitting the appeal had stayed the said notice, I am of the view that no further steps should be taken by the respondents on the basis of the notice issued under Section 148 of the said Act dated 24th April, 2024 for assessment year 2017-18 till the end of December, 2024 or until further order, whichever is earlier.

8. Liberty to mention upon expiry of the period for exchange of affidavits.

(RAJA BASU CHOWDHURY, J.)

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