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IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

WPO/417/2024

P K TESTILES LIMITED
VERSUS
UNION OF INDIA & ORS.

BEFORE
The Hon'ble Justice RAJA BASU CHOWDHURY
Date: 20TH JUNE, 2024.

Mr. Brijesh Kumar Singh, Adv.
Mr. Om Prakash Prasad, Adv.
...for the petitioner
Mr. Tilak Mitra, Adv.
...for the respondents

THE COURT: Affidavit of service filed in Court today be kept with the records.

Challenging the erroneous exercise of jurisdiction by the jurisdictional assessing officer in issuing the notice dated 8th April, 2024 under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") for the assessment year 2018-19, the present writ application has been filed.

Mr. Singh, learned advocate representing the petitioner by drawing attention of this Court to the provision of Section 151A of the said Act and the notification dated 29th March, 2022, appearing at page 57 of the writ application, submits that in terms of Section 151A of the said Act, a Scheme has already been framed which has been notified on 29th March, 2022. In terms of Clause 3 of the aforesaid Scheme, the issuance of notice under Section 148 of the said Act can only be made 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 the total income or loss of assessee.

Having regard to the aforesaid, it is submitted that the jurisdictional assessing officer could not have issued the notice under Section 148 of the said Act dated 8th April, 2024 for the assessment year 2018-19. The same is without jurisdiction and void.

Mr. Mitra, learned advocate entered appearance on behalf of the respondents. By placing the order dated 8th January, 2024, in APO 153 of 2003 in the case of Drillsol Infrastructure Pvt. Ltd. v. Union of India & Ors., passed by the Division Bench of this Court presided over by the Hon'ble the Chief Justice, submits that an identical issue is pending consideration before the Division Bench of this Court. It is submitted that this Court may be pleased to adjourn the present proceedings so that the decision to be taken by the Hon'ble Division Bench can be communicated to this Court.

Having heard learned advocates appearing for the respective parties and having considered the materials on record, since it appears that the petitioner has made out a prima facie case and since the very authority of the jurisdictional assessing officer to issue notice under Section 148 of the said Act is in question, I am of the view that the writ petition shall be heard. I notice the Division Bench of this Court in the case of Drillsol Infrastructure Pvt. Ltd. (supra) in identical set of facts while considering the challenge to the exercise of authority by the jurisdictional assessing officer pending hearing of the appeal has granted interim stay of all further proceedings pursuant to the notice issued under Section 148 of the said Act. Having regard to the above, there shall be an interim order of stay of all further proceedings pursuant to the notice issued under Section 148 of the said Act dated 8th April, 2024 for the assessment year 2018-19, for a period upto the end of November, 2024 or until further order, whichever is earlier.

Let affidavit in opposition to the present application be filed within six weeks from date; reply thereto, if any, within three weeks thereafter.

Liberty to mention.

(RAJA BASU CHOWDHURY, J.)

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