

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/418/2024

Gopal Kumar Agarwal
Versus
Union of India & Ors.

BEFORE

The Hon'ble Justice RAJA BASU CHOWDHURY

Date: 2nd July, 2024.

Mr. Om Prakash Prasad, Adv.
...for the petitioner
Mr. Soumen Bhattacharjee, Adv.
...for the respondents

THE COURT: 1. The petitioner challenges the notice dated 8th 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, inter alia, on the ground that the notice has been issued by the jurisdictional assessing officer, despite having no jurisdiction to issue the same.

2. By placing the provision of Section 151A of the said Act and the Scheme framed by the Central Government, which has since been notified on 29th March, 2022, it is submitted that a notice under Section 148 of the said Act can only 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.

4. Having regard to the aforesaid, it is submitted that no notice under Section 148 of the said Act could be issued by the jurisdictional assessing officer consequent upon publication of the Scheme as aforesaid.

5. Mr. Rai, learned advocate entered appearance on behalf of the respondents.

6. Since it is noticed that the jurisdictional assessing officer has issued the notice under Section 148 of the said Act on 8th April, 2024 for the assessment year 2017-18 and 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*, while considering the competence of the jurisdictional assessing officer to issue a notice consequent upon publication of the Scheme vide Notification dated 29th March, 2022, and admitting the appeal has stayed the said notice, I am of the view that the present writ petition, which raises a jurisdictional issue, is also to be heard upon exchange of affidavits.

7. Since the writ petitioner has been able to make out a prima facie case, the notice, issued by the jurisdictional assessing officer under Section 148 of the said Act for the assessment year 2017-18 dated 8th April, 2024, shall remain stayed till the end of November, 2024 or until further order, whichever is earlier.

8. 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.

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

(RAJA BASU CHOWDHURY, J.)

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