

ORDER SHEET
WPO/213/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SILVERTOSS VANIJYA PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date: 8th February, 2023.

Appearance:
Mr. Brijesh Kumar Singh, Adv.
Mr. Om Prakash Prasad, Adv.
...For the Petitioner
Mr. Om Narayan Rai, Adv.
...For the Respondents

The Court: Heard learned counsel appearing for the parties.

By this writ petition, petitioner has challenged the impugned notice dated 26th May, 2022 under Section 148A(b) of the Income Tax Act, 1961 relating to assessment year 2013-14 and subsequent order dated 23rd July, 2022 under Section 148A(d) of the aforesaid Act issued along with notice under Section 148 of the Income Tax Act, 1961. It appears from record annexed to this writ petition that relating to the same assessment year notice under Section 148 of the Income Tax Act, 1961 dated 23rd June, 2021 was quashed by the order of this Court dated 10th November, 2021 in WPO 825 of 2021 by which the whole proceeding was set aside on the ground that before coming into effect newly inserted Section 148A of the Act from April, 2021, already reassessment was completed and order under Section 147/143(3) of the Act was passed on 18th June, 2019 which is also much prior to the order of the Hon'ble Supreme Court dated 4th May, 2022 in the case of Union of India vs. Ashish Agarwal. In spite of the adverse remarks passed by this Court against the said assessing officer in earlier order of this

Court dated 10th November, 2021 for issuing earlier notice dated 23rd June, 2021, under Section 148 of the Act, relating to the same assessment year, the very same assessing officer named Bitan Roy, Ward 5(1) Kolkata has issued the second impugned notice for reopening against already reassessed order in defiance of the order of this Court and which is contumacious also. Conduct of the officer as appears that he is not mentally in a position to discharge his duty and that the reason best known to him as appears from his conduct that he is harassing the petitioner by inviting for this unnecessary litigation and cost of which is to be incurred by the petitioner and by the Government also from public exchequer for defending such type of cases.

Mr. Rai, learned advocate representing the respondent Income Tax Authority is not in a position to defend the conduct of the Assessing Officer and justify the issuance of the impugned notice under Section 148A(b) and order under Section 148A(d) of the Act after the reassessment was completed long back i.e. prior to newly amended Section 148A of the Act and judgment of the Hon'ble Supreme Court in the case of Ashish Agarwal (supra).

Considering the facts and circumstances of this case, the impugned order dated 26th May, 2022 under Section 148A(b) of the Act and subsequent order under Section 148A(d) along with notice under Section 148 dated 23rd July, 2022 are quashed.

Accordingly this writ petition being WPO 213 of 2023 is disposed of by allowing the same and imposing a cost of Rs. 10,000/- on the assessing officer Mr. Bitan Roy to be paid to the petitioner from his salary within a period of two weeks.

Ministry of Law and Justice shall forward a copy of this order to the Principal Chief Commissioner of Income Tax – I, Kolkata.

(MD. NIZAMUDDIN, J.)

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