

28.03.2022.
p.b.
Sl. No.25.

W.P.A. 5273 of 2022

Realization Stock & Equity Pvt. Ltd.
Vs.
Income Tax Officer, Ward No.4 (1),
Kolkata & Ors.

Mr. Avra Mazumder,
Mr. B. Gupta,
Mr. Sk. Md. Bilwal Hossain,
Mr. K. Ray.

.....for the petitioner.

Mr. P. Dudharia.

.....for the respondents.

In this matter, petitioner has challenged the impugned notice dated 31st March, 2021 under Section 148 of the Income Tax Act, 1961 relating to the assessment year 2017-18 and subsequent notice dated 14th January, 2022 issued under Section 142 (1) of the Income Tax Act on the ground that the impugned notice under Section 148 and subsequent proceeding is bad and not sustainable in law for the reason that the same has been issued in total non-application of mind.

Learned advocate appearing for the petitioner to substantiate its aforesaid allegation has placed the recorded reason which appears at page 51 of the writ petition and which is the basis of issuance of the aforesaid impugned notice under Section 148 of the Act and on perusal of the same, I find in first paragraph that one of

the reasons for reopening of assessment is that no regular assessment under Section 143 (3) of the Act was made in the instant case and even in the last paragraph of the said reason again it has been recorded again that no assessment order as per Section 2 (40) of the Act was made in the instant case which is totally incorrect and contrary to the respondent's own record from where it appears that the regular assessment under Section 143 (3) of the Act was passed on 10th December, 2019 being Annexure P-10 to the writ petition. It also appears from record annexed to the writ petition that the aforesaid patent mistake of recording that no regular assessment was made in this writ petition was brought to the notice of the assessing officer concerned on 23rd December, 2021 by filing objection against the aforesaid impugned notice and the assessing officer concerned instead of considering and disposing of the said objection dated 23rd December, 2021, has issued another notice under Section 142 (1) of the Act on 14th January, 2022. Though this Court in exercise of Constitutional Writ Jurisdiction under Article 226 of the Constitution of India is very reluctant to interfere with the sufficiency of the findings and reasonings of the recorded reason for the purpose of reopening of any assessment but since it is a case of patent non-application of mind by the assessing officer concerned as appears from the reason recorded by him repeatedly recording that no regular

assessment was made in the instant case which is totally incorrect and contrary to respondent's own record and which is the basis of the reopening of assessment, the impugned notice under Section 148 of the Income Tax Act and all subsequent proceedings are quashed. However, quashing of the impugned notice and subsequent proceeding will not prevent the assessing officer concerned to initiate any fresh proceeding in future in accordance with law.

This writ petition being WPA No.5273 of 2022 stands disposed of accordingly without calling for any affidavits from the respondents since it will not improve the admitted factual position which appears from record of this case.

(Md. Nizamuddin, J.)