

OD 37

ORDER SHEET
WPO/2814/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL JURISDICTION

DILIP BHIKHALAL DESAI
VS
DEPUTY COMMISSIONER OF INCOME TAX KOLKTA AND ORS

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date: 13th January, 2023.

Appearance:

Mr. Sounak Basu, Adv.
Mr. Swagato Kabiraj, Adv.
. . .for the petitioner.

Mrs. Smita Das De, Adv.

The Court: Heard learned counsel appearing for the parties.

Affidavit of service filed in Court be kept with the records.

By this writ petition, petitioner has challenged the impugned order dated 29th July, 2022 under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2015-16, and, all subsequent proceedings based on the impugned notice dated 29th July, 2022 under Section 148 of the Income Tax Act, 1961, mainly on the ground of jurisdiction of the assessing officer in issuance of the impugned notice under Section 148 of the Act being barred by limitation under Section 149(1)(a)/149(1)(b) of the Income Tax Act, 1961. In the impugned order under Section 148A(d) of the Act, the assessing officer has tried to justify the initiation of re-assessment proceeding by relying on an instruction being No.

01/2022 dated 11th May, 2022 issued by CBDT. Admittedly, the issuance of notice and initiation of re-assessment proceeding are beyond six years and, prima facie, it is barred by limitation both under the old Act as well as under newly amended provision relating to Section 147 of the Act.

Considering the submission of the parties, I am of the view that this matter deserves adjudication by calling for affidavits from the respondents and I am also of the view that the petitioner has been able to make out a prima facie case for an interim order by raising the issue of jurisdiction of the assessing officer concerned in initiating the impugned re-assessment proceeding.

Let the respondents file affidavit-in-opposition within four weeks; petitioner to file reply thereto, if any, within two weeks thereafter.

The matter shall appear for final hearing in the monthly list of April, 2023.

In the meantime, there will be no further proceeding on the basis of the impugned order dated 29th July, 2022 being Annexure P-6 to the writ petition till the disposal of the writ petition.

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(SHEKHAR B. SARAF, J.)