OD-3

WP No.1172 of 2015

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

MESSRS. ELITE PHARMACEUTICALS & ANR.
Versus
INCOME-TAX OFFICER, WARD 46(1), KOLKATA

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

Date : 23rd February, 2016.

Appearance:
Mr. R. N. Dutt, Adv.
Ms. S. Roychowdhury, Adv.

Mr. S. Mukherjee, Adv.

The Court : The petitioners question the propriety of a letter dated August 17, 2015 issued by the Income Tax Officer, Ward-46(1), Kolkata on the ground that despite a specific challenge to the authority of such ITO to issue notices under Section 148 of the Income Tax Act, 1961 to the petitioning assessee, the aspect of the erroneous assumption of jurisdiction has not been dealt with in the letter.

There is no dispute that the petitioning assessee accepted the ITO, Ward-46(1), Kolkata to be the appropriate assessing officer prior to the issuance of a Central Board of Direct Taxes notification of October 22, 2014. According to the petitioners, by virtue of the said notification of October 22, 2014, with came into effect from November

15, 2014, the jurisdiction over the petitioning assessee ought to have been exercised by ITO Ward-22(2), Kolkata as the assessing officer.

Upon receipt of the notices under Section 148 of the Act dated March 27, 2015 from the ITO Ward-46(1), the petitioning assessee sought to question the authority of such assessing officer by letters of April 29, 2015 delivered to the department on May 1, 2015. The department has produced documents to demonstrate that the notices under Section 148 of the Act dated March 27, 2015 were received by the petitioning assessee on the same day of March 27, 2015. The petitioners have produced copies of the relevant notices of March 27, 2015 from a previous petition filed in this Court. Each of the notices under Section 148 of the Act pertaining to assessment years 2012-13, 2013-14 and 2014-15 required the assessee to deliver to the assessing officer "within 30 days from the date of service of this notice" a return in the prescribed form of the assessee's income. The notices also indicated that they were issued after obtaining the necessary satisfaction of the Commissioner of Income Tax, Kolkata-16, Central Board of Direct Taxes.

Since there is no dispute that the petitioning assessee received the said three notices on March 27, 2015 itself, the petitioning assessee ought to have furnished the returns demanded within 30 days from the date of service of such notice to the assessing officer. Such period of 30 days expired on April 28, 2015 since the date of receipt of the notice (March 27, 2015) has to be disregarded for the purpose of counting 30 days therefrom and the month of March has 31 days.

Section 124(3)(b) of the Act permits a person to call in question the jurisdiction of an assessing officer at any stage prior to the expiry of the time allowed by a notice under Section 148 for the making of the return. There is no dispute that clause (a) of Section 124(3) of the Act does not apply to this case and the other situations in clause (b) pertaining to Sections 115WD, 142 and 115WH also do not apply. In the words of Section 124(3) of the Act, the material part of the provision, as far as it is applicable in this case, may be read as follows:-

> "(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer –
>
> (a) . . . .
>
> (b) where he has made no such return, after the expiry of the time allowed by the notice under …Section 148 for the making of the return…"

The petitioners have sought to question the authority of the ITO, Ward-46(1) to issue the notices under Section 148 of the Act to the petitioning assessee and the consequent steps. On the petitioners' previous petition, WP No.655 of 2015, an order was made on July 14, 2015, which directed the ITO, Ward-46(1) "to respond to the petitioners' letter dated 29th April, 2015." The concerned ITO has responded to such letter by the impugned letter dated August 17, 2015.

As far as the CBDT notification which took effect from November 15, 2014 is concerned, the concerned ITO has only referred to Section 124(3) of the Act to suggest that the petitioning assessee could not have questioned the officer's authority by the letters dated April 29, 2015. The ITO has also referred to certain other aspects which, if correct, may amount to the petitioning assessee having submitted to the jurisdiction of the concerned ITO, but even if such aspects are not taken into consideration, it is evident that the objection raised by the ITO by citing Section 124(3) of the Act is insurmountable.

The petitioners say that the petitioners did not question the authority of any assessing officer within the meaning of Section 2(7A) of the Act. The petitioners assert that since, under the relevant notification, the ITO, Ward-22(2), Kolkata was the appropriate ITO to assume the authority of assessing officer qua the petitioning assessee, Section 124(3) of the Act would not be applicable.

With respect, as incomprehensible as the submission may be, the same appears to be absurd. A particular ITO issued one or more notices to the petitioning assessee under Section 148 of the Act assuming the role of an assessing officer. In so doing, it is possible that such ITO may not have had the jurisdiction as the assessing officer qua the assessee to whom the notice was addressed; but there can be no doubt that the authority was exercised by the ITO as an assessing officer. When the assessee received the notice, the assessee could question the authority of the ITO issuing the notice as an appropriate assessing officer within the time that the assessee was required to respond to such notice under Section 148 of the Act. Once the addressee of a notice failed to question the jurisdiction of assessing authority who issued the notice under Section 148 of the Act within the time stipulated in the notice under Section 148 of the Act to do the thing required thereby, by virtue of Section 124(3)(b) of the Act, the assessee was precluded from questioning the authority of the addressor of the notice as an assessing officer. That is clear and simple and evident from Section 124(3)(b) of the Act.

As noticed earlier, the petitioning assessee did not respond to the notice under Section 148 of the Act within the stipulated period of 30 days from the date of receipt thereof. Thus, upon such delay on the part of the petitioning assessee, the right to question the authority of the issuer of the notice under Section 148 of the Act stood extinghished. The concerned ITO has rightly referred to such aspect of the matter in the impugned response of August 17, 2015.

After all, the jurisdictional challenge did not go to the root of the matter; it only pertained to a perceived irregularity on the basis of the business allocated to different ITOs by the CBDT notification of October 22, 2014. An analogy in general civil law may be noticed. Section 21 of the Code of Civil Procedure,1908 contains a similar provision that precludes an objection as to the territorial or pecuniary jurisdiction being taken after a particular stage of a civil suit.

An additional twist is sought to be given by the department in suggesting that the ITO, Ward-46(1) may not have been the person entitled to receive the returns from the petitioning assessee, but that such officer exercised the authority of an assessing officer over the petitioning assessee in view of the petitioning assessee having filed the original returns with such officer. According to the department, the appropriate assessing officer of the petitioning assessee ought to have been the assessing officer whose duties have now been assigned to the ITO, Ward-46(1) under the notification of October 22, 2014 which became effective on November 15, 2014. However, such aspect of the matter is not gone into since such reason is not expressly or otherwise indicated in the impugned letter of August 17, 2015.

If the reasons indicated in a relevant order suffice for such purpose, it would be wholly unnecessary to supplement the order with additional reasons which did not occur to the authority rendering the decision in the first place.

Since it is evident that the petitioning assessee was precluded by Section 124(3)(b) of the Act from questioning the authority of the assessing officer who had issued the notices under Section 148 of the Act dated March 27, 2015 to the petitioning assessee on April 29, 2015, the contents of the letters dated April 29, 2015 and the objection as to jurisdiction contained therein had been rightly disregarded by the ITO, Ward-46(1), Kolkata.

Accordingly, WP No.1172 of 2015 is dismissed and the department is left free to take appropriate steps against the petitioners in accordance with law.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.)

bp./sg.