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WPA 1661 of 2022

McLeod Russel India Limited & Anr.
Vs
Deputy Commissioner of Income Tax, Circle 4(1), Kolkata & Ors.

Mr. Abhrotosh Majumdar, Ld. Sr. Adv.,
Mr. Asim Choudhury,
Mr. Soham Sen
... For the Petitioners.
Mr. P.K. Bhowmick,
Mr. Soumen Bhattacharya
... For the Respondent Nos. 1-6.

Heard learned Advocates appearing for the parties.

In this writ petition, petitioners have challenged the impugned order dated 30th June, 2021 under Section 143(3) read with Section 144C(3) with Section 144B of the Income Tax Act, 1961 on the ground of patent violation of natural justice in passing the impugned order before consideration of objection to the draft assessment order dated 31st March, 2021 and such objection to the draft assessment was sent by Speed Post on 26th of April, 2021 to the Dispute Resolution Panel under the relevant provision of the Statute and it is the case of the petitioners substantiated by record that the said objection was sent by Speed Post before the expiry of the time which was 31st May, 2021 though it reached to the DRP Authority on 10th June, 2021 over which petitioners have got no control for the fault committed by the Postal Department in delivering the documents/objection after the expiry of the time within which petitioners were to file the objection against the draft assessment. After the filing of the objection to the draft assessment, DRP Authority even asked for submission of remand report from the Assessing Officer concerned but the Assessing Officer before consideration of the pending objection to the draft assessment by the DRP Authority, passed a final assessment order on 30th June, 2021 and specifically recorded in the said final assessment order that it had verified from the record that no such objection to the draft assessment order was available before the DRP Authority which is contrary to record since postal document shows that objection to the draft assessment order which was posted before the expiry of the time to file though reached before the DRP Authority on 10th June, 2021 for the fault on the part of the Postal Department but it is an admitted position that before passing of the impugned assessment order which was passed on 30th June, 2021 already DRP Authority had received the objection to the draft assessment. It also appears on perusal of the order of the DRP Authority rejecting the objection of the petitioners to the draft assessment is solely on the ground that since the final assessment order has already been passed, no further order on the aforesaid objection of the petitioners could be considered. It is noticeable that when the Assessing Officer who himself passed assessment order, instead of sending a detailed remand report he could have simply in its remand report conveyed to the DRP Authority that no purpose could be served when he has already passed the final assessment order and the DRP Authority should have considered this aspect which is substantiated from record that the objection filed by the petitioners was posted before the expiry of the time granted by him though it may have reached lately to him due to postal delay but such fault cannot be attributed to the petitioners.

Mr. Mazumder, learned senior Advocate appearing for the petitioners in support of his contention has relied on a decision of the Bombay High Court in the case of Skoda Auto Volkswagen India (P) Ltd. vs. Commissioner (Appeals) reported in (2021) 125 taxmann.com 241(Bombay) and particularly on paragraphs 12, 21, 28, 29.1 and 34 to 38 that if a person establishes that he filed any appeal/objection/application, date of posting is relevant and not the date of receipt of the appeal/objection/application for the purpose of limitation.

Mr. Bhowmick, learned Advocate appearing for the respondents opposes this writ petition by contending that since the assessment order has already been passed which is an appealable order, this court should not interfere but he could not contradict the facts as discussed above which are substantiated by record that petitioners' right to file objection and consideration of the same before passing the final assessment order has been infringed in this mater for no fault of him.

Considering the submission of the parties and admitted facts which emerge from record I am of the considered view that the interest of justice will be sub-served if the impugned order of assessment dated 30th June, 2021 and the impugned order of the DRP Authority dated 9th December, 2021 are set aside and the matter is remanded to the DRP Authority concerned to proceed with the matter from the stage of receipt of the objection to the draft assessment and all legal consequences will follow accordingly.

With these observations and directions, this writ petition, being WPA 1661 of 2022 is disposed of.

(Md. Nizamuddin, J.)