Item No.2.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 08.06.2022 & 21.06..2022

DELIVERED ON:21.06.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. No.704 of 2022
With
I.A. No.CAN 1 of 2022

Biki Overseas Private Limited & Anr.

Vs.

The Union of India & Ors.

Appearance:-
Mr. Vikash Singh,
Ms. Sneha Singh,
Mr. R. N. Bandyopadhyay ..... for the appellants.

Mr. S. Roy Chowdhury ... for the respondents.

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

1. By consent of the parties, we take up the appeal itself for hearing and disposal.

2. This intra-Court appeal is directed against the order dated 26th April, 2022 in W.P.A. No.6938 of 2022. The appellants filed the writ petition challenging an assessment order dated 23rd March, 2022 under section 147 read with section 144B of the Income Tax Act, 1961 (hereafter 'the Act'). In the writ petition, the appellants had challenged the assessment order mainly on the ground of violation of principles of natural justice.

3. It is not in dispute that the show cause notice dated 8th March, 2022 along with the draft assessment order was sent to the assessee through online mode. However, the assessee's case is that he did not open his inbox on account of ill health and as a result of which, he could not respond to the show cause

notice within the date fixed for compliance, i.e. 14th March, 2022. Therefore, the writ petition was filed seeking for an opportunity to place the material before the Assessing Officer.

4. The learned Single Bench opined that the appellants have not challenged the constitutional validity of any statutory provision and that there is no violation of principle of natural justice and the assessment order being an appealable order, did not entertain the writ petition and the same was dismissed. Aggrieved by the same, the appellants had filed the present appeal.

5. The learned Advocate appearing for the appellants pleads for an opportunity before the Assessing Officer so that the assessment order can be made on merits after considering the material, which is available with the appellants /assessee.

6. The learned Standing Counsel for the respondents, on written instruction from the Income Tax Officer, Ward –11(1), Kolkata, submitted that the order being an appealable order, the writ petition was rightly not entertained. Further, it is submitted that ample opportunity was provided to the assessee

before passing the ex-parte assessment order, which was passed on 23rd March, 2022 by the National Faceless Assessment Centre (N.F.A.C.) and that the appellants/assessee in spite of filing the appeal before the CIT(A) had filed the writ petition before this Court. Though such averment has been made, no particulars have been given as to on what date the appeal was filed before the CIT (A) nor the stage of the present appeal.

7. The learned Advocate appearing for the appellants, on specific instruction from his client, would submit that the appellants had never filed an appeal and moved the writ Court seeking for an opportunity to go before the Assessing Officer.

8. It is no doubt true that the impugned order is an appealable order and the appellate authority can re-examine the factual position. However, the opportunity which the assessee is entitled to before the original authority can never be replaced to that of the opportunity before the appellate authority. The Hon'ble Supreme Court in the case of Tin Box Company, New Delhi Vs. CIT, New Delhi reported in (2001) 9 SCC 725 held that the assessment order made by the ITO without giving a proper opportunity of hearing to the assessee was bad

in law. Further, it was held that the possibility of placing of evidence by the assessee before the appellate authorities would be of no use to hold the said order valid.

9. Considering the facts and circumstances of the case, we are of the view that ends of justice would be met if an opportunity is granted to the assessee to go before the Assessing Officer. However, for such reason, we are not inclined to quash the assessment order dated 23rd March, 2022, which shall be treated as draft assessment order and the appellants shall be permitted to put in their objections within a period that will be indicated by the Assessing Officer within a week from the date of receipt of the server copy of this order. After filing of the objections, the Assessing Officer shall proceed to complete the assessment in terms of the procedure laid down by the National Faceless Assessment Centre.

10. Assuming an appeal had been preferred before the CIT (A), it would not be of any consequence as we have directed the Assessing Officer to take a fresh decision in the matter.

11. With the aforesaid direction, the appeal and the connected application are disposed of.

12. No costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)