13-06-2022
Item No.05
KS

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.9646 of 2022

All India Trinamool Congress
-vs-
Union of India & Ors.

Mr. J.P. Khaitan, Sr. Adv.
Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Avra Majumdar,
Mr. Sk. Md. Bilwal Hossain
Mr. Piyoush Agarwal ...for the petitioner

Ms. Smita Das De ...for the respondent

Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned order dated 25th April, 2022 under Section 148 A (d) of the Income Tax Act, 1961 relating to the Assessment Year 2018-19 on the ground of violation of principles of natural justice. It appears from record at page-133 of the Writ Petition that a notice dated 30th March, 2022 was issued to the petitioner under Section 148 A (b) of the Act along with annexure indicating that an income of Rs.5,16,78,114/- shown in the ITR includes interest income of Rs. 90,01,811/- was not a part of the deposits and stated that an amount of Rs. 1,71,95,092/- was not disclosed in the ITR filed for the assessment year 2018-19 and in the said annexure, 18 account numbers and name of the banks have been given without mentioning branch or break up of the amount lying in each of those accounts and petitioner was asked to give response to the same on or before 12th April, 2021.

It appears from record being annexure -P-4 to the

Writ Petition that in response to the aforesaid notice under Section 148 A (b) of the Act, petitioner filed a response on 8th April, 2022 and prayed for extension of time for further compliance to the said notice. It also appears from record being annexure – P-5 to the Writ Petition that extension of time was granted to the petitioner to file response to the aforesaid notice. From annexure-P-6 to the Writ Petition at Page -136 it appears that petitioner has filed a response to the aforesaid notice dated 20th April, 2022 particularly Paragraphs – 4, 5, 6 and 7 of the said reply are relevant which are recorded hereunder:

"4. In your notice on page 4 it has been stated as follows:-

"*it is observed that the total income of Rs. 5,16,78,114/- shown in the ITR includes interest income of Rs. 90,01,811/- which is not part of the deposits shown in column 'C' in the table above. Therefore, total receipts/income excluding interest as per ITR is of Rs. 4,26,76,303/-. As such, difference in total income in terms of total deposits (including cash deposits) vis-à-vis income disclosed in the ITR as Total income from Other Sources including donations & contributions (excluding interest) is arrived at Rs. 1,71,95,092/- (=Rs. 5,98,71,395-Rs.4,26,76,303).*"

5. Thus the entire premises of issue of the notice u/s 148A of the Act is that the total deposit i.e. cheque and cash deposits in our bank accounts excluding interest amounted was Rs. 5,98,71,395. We submit that this amount is factually incorrect.

6. On our examination, the total deposit of cheque and cash in these bank accounts comes to Rs. 4,63,72,433 (excluding interest credited in bank accounts). We are enclosing a working sheet marked as Annexure A (Page No 12) along with this reply, which contains our bank account wise details of cash deposit, cheque deposit and bank

interest credited. On examination of this chart, you shall find that the cash deposit in all accounts during the AY 2018-19 is Rs. 3,21,02,132, the cheque deposit in all accounts during the AY 2018-19 is Rs. 1,42,70,301 i.e. total Rs.4,63,72,433.

7. We therefore request you to provide the details and account wise cash, and cheque break up, as per your records and on the basis of which you have come to the conclusion that the cash and bank deposit in our accounts adds up to Rs. 5,98,71,395. We submit that it is for you to explain how this amount of Rs. 5,98,71,395 has been arrived at by you. If you have any material to prove the same, please provide us with such material, or else the allegation of deposit of Rs. 5,98,71,395 will be considered as imaginative, based on conjectures and summarizes and not backed by any material and therefore not reliable for any assessment or reopening purposes."

It appears from the aforesaid response/objection that petitioner had requested the respondent Assessing Officer to provide the details and accounts particularly cash and cheque break up for reaching to the conclusion of escapement of income at the figure in question. It is the grievance of the petitioner that in spite of such request made by the petitioner for providing it details of the break up of the amount bank branch wise and account wise but the same was not provided to the petitioner before passing the impugned order dated 25th April, 2022, under Section 148 A (d) of the Act and this fact of request made by the petitioner has been recorded by the Assessing Officer himself in the impugned order dated 25th April, 2022. Even in the impugned order only a total amount of deposit by cheque more than Rs. 20,000/- and amount less than Rs. 20,000/- has simply been given as Rs.1,06,13,771/- and Rs.1,71,55,492/- respectively without disclosing the basis for reaching to the conclusion of such figure though petitioner has already given a detail of donations with account number, name of the bank and the amount which does not tally with the figure given by the Assessing Officer in his show cause notice and as a result petitioner could not meet the allegation of the respondent and such order has caused a serious prejudice to the interest of the petitioner and it has been deprived of its right to give effective response to the aforesaid impugned notice under Section 148 A (b) of the Act which amounts violation of principles of natural justice.

Ms. Smita Das De, learned Advocate appearing for the petitioner could not satisfy this Court with any document as to whether petitioner's such request for furnishing break up of the amount in question bank wise, account wise were furnished to the petitioner or not and she showed her inability to produce any document in this regard and she simply submitted that in this regard petitioner could satisfy the Assessing Officer in course of reassessment proceeding.

Considering the submission of the parties I am of the view that there was violation of principles of natural justice by the Assessing Officer in not providing break up for the amounts on the basis of which Assessing Officer has reached to the figure of amount alleged to have been escaped the income referred in the annexure to the impugned notice dated 30th March, 2022 under Section 148 A (b) of the Act before passing the impugned order under Section 148 A (d) of the Act because of which petitioner could not give proper and effective response to the impugned notice and as such the impugned order is in violation of principles of natural justice.

Considering the facts and circumstances of the case as appears from record and submission of the parties, the impugned order dated 25th April, 2022 under Section 148 A (d) of the Act and subsequent notice under Section 148 of the Act are set aside and the matter is remanded back to the Assessing Officer to pass fresh order after providing the break up of the amount in question bank account wise and as requested by the petitioner as per its letter dated 28th April, 2022 and he shall pass such fresh order under Section 148 A (d) of the Act after giving opportunity of hearing to the petitioner or its authorized representative. At the time of hearing petitioner shall be entitled to take all the points urged in this Writ Petition.

Since this Writ Petition has been disposed of at the motion stage without calling for affidavit from the respondents, allegations contained in the Writ Petition shall be deemed to have been denied by the respondents.

This Writ Petition being WPA No.9646 of 2022 is hereby accordingly disposed of. There shall be no order as to costs.

Certified website copy of this order, if applied for, shall be given to the parties.

[Md. Nizamuddin, J]