Item No.3.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 22.12.2022

DELIVERED ON:22.12.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.1943 of 2022
with
I.A. No.CAN 1 of 2022

Shree Ramkirshna Sishu Tirtha & Anr.
Vs.
Income Tax Officer, Ward 23(1), Hooghly & Ors.

Appearance:-
Mr. Sanjay Bhowmik,
Mr. Indranil Banerjee,
Mr. Subrata Mukherjee ... for the appellants.

Mr. Om Narayan Rai .... for the respondents.

JUDGMENT

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

1. This intra-Court appeal by the writ petitioners is directed against the order dated 28th November, 2022 in W.P.A. 19557 of

2022. By the said order, the writ petition stood disposed of by directing the appellants to file a representation before the assessing officer and explaining as to why two PAN numbers were obtained by the appellants / assessee. Till the disposal of the representation, the learned Single Bench has directed an order of status quo to be passed pursuant to the order passed under Section 148A(d) of the Income Tax Act, 1961 (for short, "the Act") dated 30th April, 2022. Aggrieved by such order, the appellants / writ petitioners have filed the present appeal.

2. We have heard Sanjay Bhowmik, learned Advocate appearing for the appellants and Mr. Om Narayan Rai, learned senior standing counsel for the respondents/revenue.

3. Though we fully agree with the substantial part of the direction issued by the learned Judge directing the appellants to go before the assessing officer and make a representation, the assessing officer will be precluded from considering the representation since already he has passed an order under Section 148A(d) of the Act dated 13th April, 2022. Therefore, unless and until such order is set aside and the assessing officer is empowered to consider the matter afresh, the direction issued in the writ petition cannot be implemented.

4. We have perused the order dated 13th April, 2022 passed under Section 148A(d) of the Act and we find that the order to be a non-speaking order. The appellants had submitted a reply dated 28th March, 2022 to the notice issued under Section 148A (b) of the Act. In the said reply, the assessee has pointed out as to how and under what circumstances two PAN numbers were applied and the fact that one of the PAN numbers was surrendered, was also set out. The assessing officer should examine the correctness of the stand taken by the appellants, which according to the appellants, was an inadvertent mistake. As we are satisfied that the order dated 13th April, 2022 is a non-speaking order, we are inclined to interfere with the same and remand the matter back to the assessing officer for fresh consideration and preserving the direction issued by the learned Single Bench directing the appellants to submit a representation.

5. In the result, the appeal along with the connected application are disposed of by setting aside the order dated 13th April, 2022 passed under Section 148A(d) of the Act and the matter stands remanded and restored to the file of the assessing officer. The appellants are directed to submit a representation as directed by the learned Single Bench and the assessing

officer on receipt of the representation shall afford an opportunity of personal hearing and consider the reply dated 28th March, 2022 as well as the representation and pass a fresh order on merits and in accordance with law.

6. Needless to state that the consequential notice issued under Section 148 of the Act is also set aside.

7. There shall be no order as to costs.

8. 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)