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APOT/88/2022
IA No.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

MELBROW ENGINEERING WORKS PVT. LTD.

-Versus-

UNION OF INDIA AND ORS.

Appearance:
Mr. J. P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Samit Rudra, Adv.
...for the appellant.

Mr. Om Narayan Rai, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 20th June, 2022.

The Court : This intra-Court appeal filed by the writ petitioner is directed against the order dated 13th May, 2022 by which the prayer for interim stay of the order passed under Section 148A(d) of the Income Tax Act, 1961 (the 'Act' for brevity) was refused.

We have heard Mr. J. P. Khaitan, learned Senior Counsel assisted by Mr. Pratyush Jhunjhunwala and Mr. Samit Rudra, learned

Advocates appearing for the appellant and Mr. Om Narayan Rai, learned Advocate for the respondent.

At the request and with consent of the leaned Advocates appearing on either side, the writ petition is taken up for disposal. The facts which are necessary for the disposal of the writ petition as well as this writ appeal are as follows:

The respondent/assessing officer issued notice dated 15th March, 2022 under Section 148A(b) of the Act stating that he has information which suggest that income chargeable to tax for the assessment year 2018-19 has escaped assessment within the meaning of Section 147 of the Act. The details of the information and enquiry was enclosed in Annexure-A, appended to the notice dated 15th March, 2022. The appellant/petitioner/assessee submitted their reply/objections online on 21st March, 2022. Thereafter the assessing officer has passed an order under Clause (d) of Section 148A of the Act on 30th March, 2022. The petitioner has impugned the notice dated 15th March, 2022 as well as the order dated 30th March, 2022 in the writ petition. After the order was passed, the petitioner submitted a representation on 6th April, 2022 stating that in the notice dated 15th March, 2022, reference has been made to information received from the Additional Director of the Income Tax (Investigation), Unit-3(2), Kolkata, which has been examined by the officer and they requested that copy of the said information and copies of all other information and/or relied upon documents, if any, on the basis of which re-assessment proceedings have been initiated under Section 148A of the Act. Further, the petitioner/assessee requested for providing a copy of the approval received from the Principal Commissioner of Income Tax, 1 and/or other approvals along with a copy of information relied upon by the Principal Commissioner, on the basis of which notice dated 15th March, 2022 was issued.

The representation given by the petitioner/assessee was considered and information sought for was furnished which is in the nature of a verification, details of which mentions the name of the petitioner/assessee. It is at that stage the writ petitioner had approached the writ Court and filed the writ petition in which the learned Single bench directed affidavit-in-opposition to be filed by the revenue so that the writ petition can be heard. As noted above, aggrieved by the order passed by the learned writ Court refusing to grant interim relief, the petitioner/assessee is before us.

Considering the reasons given by the learned Single Judge, we are of the view that refusing to grant interim order was appropriate for the following reasons:

Firstly, the grounds canvassed in the writ petition were not mentioned by the assessee at the first available earliest opportunity i.e. soon after the notice dated 15th March, 2022. On going through the reply, we find that the assessee had challenged the re-opening on the merits of the matter. Even thereafter there appears to have been no such grounds canvassed by the assessee as could be seen from the order dated 30th March, 2022 under Section 148A(d) of the Act. Therefore, the learned single Bench was justified in not granting any interim relief to the petitioner. Be that as it may, had the respondent/assessing officer ignored the petitioner's representation dated 6th April, 2022, the matter would have been different. Even, the respondent/assessing officer was reasonable in his approach and furnished the information sought for much after the order dated 30th March, 2022 under Section 148A(d) and the notice dated 15th March, 2022 under Section 148 of the Act. In such circumstances, it is required to be seen as to what is the opportunity that the petitioner/assessee would be entitled to. The grounds which were canvassed in the writ petition are that the assessing officer is purported to have issued the notice dated 15th March, 2022 after conducting an enquiry under Section 148A(a) of the Act and while passing the order under Section 148A(d) of the Act it has gone beyond the scope of such information which was also mentioned in the notice issued under Section 148A(b) of the Act. Further, the petitioner/assessee would contend that the assessing officer has travelled beyond the scope of the proceedings under Section 148 of the Act as decision has been taken beyond the scope of the information available and considered under Section 148A(a) of the

Act. Further it has been contended that in the proceedings under Section 148A of the Act, entire proceedings are not at large and the proceedings are to be limited to the information on the basis of which the proceedings have been initiated. Thus, it could be seen that the petitioner/assessee seeks to question the jurisdiction of the assessing officer in proceedings to reopen the assessment. If such is the situation, this Court is of the view that an opportunity should be granted to the petitioner/assessee to canvas these grounds before the assessing officer. It is no doubt true that at the earliest point of time i.e., while responding to the show cause notice dated 15th March, 2022 the assessee did not canvas such grounds. However, that would not preclude the assessee from taking as the ground which has been canvassed on touching upon the jurisdiction of the assessing officer to proceed with the reopening proceedings.

As noticed above, had the assessing officer ignored the representation dated 6th April, 2022, the matter would have been different. But as mentioned, the assessing officer was reasonable and the information sought for by the assessee was furnished. If that is so, then principles of natural justice would be met if an opportunity is granted to the assessee to place before the assessing officer the additional grounds which have been canvassed in the writ petition as well as before us. The assessing officer would have to decide as to whether the reopening proceedings, though initiated by issuing a notice under Section 148A(b), does it refer to any enquiry which is provided for in clause (a) of Section 148A of the Act. However, we do not wish to express any opinion on the issue as it will be pre-judging the matter and it is best left to the decision of the assessing officer. For such reasons alone, we are inclined to interfere with the order passed under Section 148A(d) dated 30th March, 2022. We make it clear that we have not rendered any finding on the merits of the matter, but we have proceeded solely on the basis that the petitioner/assessee should have an opportunity to canvas the grounds which have been canvassed in the writ petition as well as before us. To enable the assessing officer to do a fresh exercise, it has become necessary to interfere with the order dated 30th March, 2022 passed under Section 148A(d) of the Act and not on merits of the matter.

In the light of the above, the appeal (APOT/88/2022) is dismissed and the order passed by the learned Single Judge refusing to grant any interim order cannot be interfered.

For the reasons set out above, the writ petition (WPO/2046/2022) is allowed and the order dated 30th March, 2022 passed under Section 148A(d) is set aside. The matter stands remanded back to the file of the assessing officer. The petitioner/assessee is granted ten days time to submit their representation based on the information furnished to them pursuant to their representation dated 6th April, 2022 and on receipt of the same, the respondent/assessing officer shall proceed to pass fresh orders in accordance with law after affording reasonable opportunity to the petitioner/assessee.

In the light of the above order, the notice issued under Section 148 dated 30th March, 2022 cannot be proceeded further and consequential proceedings are left open.

Consequently, the connected application for stay (IA No.GA/1/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s/S.Das