

OD-6

APOT/89/2022
IA NO.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SARWAN KUMAR PODDAR

-Versus-

UNION OF INDIA & ORS.

Appearance:

Mr. Abhratosh Mujumdar, Sr. Adv.

Ms. Swapna Das, Adv.

Mr. Pratyush Jhunjunawala, Adv.

Mr. Siddhartha Das, Adv.

...for the appellant

Mr. Smarajit Roy Chowdhury, Adv.

Mr. Soumen Bhattacharyya, Adv.

...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 7th June, 2022.

The Court: This intra court appeal by the writ petitioner is directed against the order dated 10th May, 2022 in WPO No.2065 of 2022. The appellant filed the writ petition for (a) to declare the notice dated March 31, 2021 issued under Section 148 of the Income Tax Act, 1961 (the 'Act' in brevity); (b) to rescind the said notice dated March 31, 2021 and/or purported order dated March 31, 2022 as being without jurisdiction including the demand

for penalty; (c) to prohibit the respondents from giving effect to the said notice/order; and (d) for issuance of a Writ of Certiorari to quash the said notices as also the consequential penalty notices.

The notice/order impugned in the writ petition was challenged mainly on the ground of violation of principles of natural justice, arbitrary, erroneous, illegal, invalid and perverse and, consequently, without jurisdiction. Various facts were set out in the writ petition to substantiate those grounds. The learned Single Judge by the impugned order had dismissed the writ petition at the admission stage holding that the order, which was impugned in the writ petition, is an assessment order, an appealable order and, therefore, the writ petition cannot be entertained. Further, the learned writ court holds that there is no procedural illegality or infirmity in the reassessment proceedings. The learned writ court notes that the principles of law laid down by the Hon'ble Supreme Court in *GKN Drivershafts (India) Ltd. Vs. ITO & Others (2003)*, reported in 259 ITR 0019 (SC) has been followed and, therefore, the principles of natural justice are being complied with and the court cannot exercise its writ jurisdiction under Article 226 of the Constitution of India to consider the correctness of the decision furnished by the assessing officer and can only go into the decision making process and, accordingly, the writ petition stood dismissed making it

clear that the dismissal of the writ petition will not prevent the appellant to avail the statutory and alternative remedy by way of appeal in accordance with law.

Aggrieved by such order, the appellant is before us by way of this appeal.

We have elaborately heard Mr. Abhratosh Majumdar, learned senior standing counsel assisted by Ms. Swapna Das, learned advocate, Mr. Pratyush Jhunjunwala, learned advocate and Mr. Siddhartha Das, learned advocate appearing for the appellant and Mr. Smarajit Roy Chowdhury, learned standing counsel assisted by Mr. Soumen Bhattacharyya, learned counsel appearing for the respondent.

Firstly, we would note that the learned writ court while holding that there is no procedural illegality or infirmity in the reassessment proceedings, has not assigned any reasons to substantiate such conclusion. Therefore, we will be justified in holding that such conclusion arrived at by the learned writ court without assigning any reason is not tenable. The core issue in the instant appeal is whether there has been violation of principles of natural justice. The proceedings commenced by issuance of notice under Section 148 of the Act dated 31st March, 2021. In the annexure to the said notice the brief details of the assessee has been mentioned, brief details of the information

collected/received by the assessing officer has been referred. For better appreciation the same is quoted hereinbelow :

"2. Brief details of Information collected / received by the AO: In this case as per the information received in category of High Risk Transaction CRIU/VRU Information on Insight Portal of the department. As per the information uploaded by the JCIT(OSD), Central Circle-5(4), Mumbai as per his report bearing Letter No. Mum/Jt CIT/5(4)/Info Sharing/Wadhwa Group/20-21, dated 19/03/2021, it is noticed that the assessee has entered into significant financial transactions as mentioned hereunder in Para 5."

Thereafter, the analysis of the information collected/received has been set out, inquiries made by the assessing officer based on information collected, the findings of the assessing officer and ultimately, the assessing officer holds that he has reason to believe that income chargeable to tax has escaped the relevant assessment year. The assessee on receipt of reasons of reopening had submitted their objection dated December 21, 2021. The objection is an elaborate objection but, however, in the objection the assessee has made a specific prayer in paragraph 16 which is to the following effect:

"16. Without prejudice to above, you are requested to provide the following details and documents.

- i. The copy of the sanction by PCIT /Addl. C.I.T. u/s/ 151 of the I.T.Act.

- ii. The report uploaded by the JCIT (OSD), Central Circule-5(4), Mumbai vide no.Mum.JCIT/5(4)/Info Sharing/Wadhwa Group/20-21 dt 19.03.2021.*
- iii. The copy of the evidence of granting such alleged loan by the assessee with collaborative documents, if any, you have.*
- iv. Copy of any other document(s) gathered by the JCIT (OSD) Mumbai or you to corroborate your allegation that assessee has cash transaction with the above company.*
- v. Details of the alleged transaction of Rs.5 crores and 29.92 lacs with supportive documents."*

As would be seen from the above paragraphs, the assessee has requested for providing details and documents and the objections filed to the reopening proceedings by the assessee touching the merits of the matter as well as pointing out the legal principle were all without prejudice to the request made by the assessee to provide the details and documents. The assessing officer thereafter issued notice under Section 142(1) of the Act dated 2nd January, 2022. In response to such notice, initially the assessee sought for an adjournment by letter dated 10th January, 2022 on the ground that partial lock down was enforced in the State of West Bengal. After about three days by reply dated 14th January, 2022 the assessee has placed its response to the notice issued under Section 142(1) of the Act dated 2nd January, 2022. We note that the said objection is also a very elaborate objection.

In the said objection/reply the assessee has reiterated its earlier stand taken in its objection dated 21st December, 2021. Once again the assessee has reiterated that the information sought for by them has not been provided till date and based on mere allegations, the reassessment proceedings cannot be commenced. The assessee once again requested the assessing officer not to take any adverse view without providing the adverse finding/material in support of the allegation in the reasons for reopening and without providing effective opportunity of rebuttal as the assessee had also sought for permission to cross-examine the concerned persons who are stated to have furnished certain information which were referred to by the JCIT (OSD), Central Circle - 5(4), Mumbai. After receipt of the reply dated 14th January, 2022, the assessing officer disposed of the objection raised by the assessee to the reopening proceedings by order dated 7th March, 2022. In the said order the assessing officer takes a stand that there is no legal requirement to share the entire material collected during the course of search or post-search/assessment/post-assessment proceedings in the case of Wadhwa Group with the assessee at the stage of reopening of the proceedings and further details as required by the assessee may be shared before finalization of the assessment proceedings. Certain decisions were also referred to by the assessing officer. After receipt of the order disposing of the objection once again the assessee sent a communication dated 20th

March, 2021 reiterating their earlier request to the reply dated 21st December, 2021 requesting for details and documents. The assessee also sought for an opportunity of personal hearing through video conferencing. This opportunity was granted and we are informed that the assessee reiterated the stand taken by them right from the inception and more particularly the emphatic denial that they have not advanced any loan to the Wadhawa Group nor received any interest from them. The assessing officer thereafter proceeds to make the draft assessment order dated 27th March, 2022 and communicated the same along with the show cause notice dated 27th March, 2022. It is pointed out by the learned senior counsel for the appellant that the show cause notice dated 27th March, 2022 has been digitally signed on 28th March, 2022 and the assessee was granted only 24 hours time to respond to the show cause notice. Despite the time constraints, the assessee has given their reply dated March 29, 2022. This reply as we find to be elaborate and once again the assessee reiterated its stand taken from the inception about the non-supply of documents and details not being afforded with an opportunity of cross-examination of the concerned person etc. Thereafter, the assessing officer completes the assessment under Section 147 read with 144B of the Act vide order dated 31st March, 2022. In the said order for the first time the assessing officer refers to the proceedings initiated by Wadhwa Group before the Income Tax Settlement Commission and would

mention that the concerned persons of the Wadhwa Group though did not at the first instance before the commission disclose the names and details of the persons who had lent monies to them during the course of hearing, had mentioned the names of the persons who had lent monies and to whom they had paid interest and, according to the assessing officer, the name of the assessee also featured in the said submission made by Wadhwa Group before Settlement Commission and, this in the opinion of the assessing officer would be sufficient to hold that the transactions had taken place between the assessee and the Wadhwa Group. On reading of the assessment order, more particularly paragraphs 3 and 5 therein, we find that the assessing officer has concluded the assessment proceedings solely based upon the information which was available before the commission stated to have been furnished by Wadhwa Group. Admittedly, the assessee was not a party to the proceedings before the Settlement Commission. That apart, while issuing the notice under Section 148, in the annexures contained therein, this information was not disclosed. That apart, the assessing officer sought to reopen the assessment proceedings based upon the information obtained from JCIT(OSD), Central Circle - 5(4), Mumbai which admittedly is a third party information. It is no doubt true that the assessing officer would state that he has analysed the information and made certain inquiries thereon. However, the fact remains that the request made by the assessee for supply of

details and documents was not complied with. The reasons given by the assessing officer that the entire information pertaining to the search and seizure of the portion of Wadhwa Group cannot be furnished to the assessee. The assessing officer may be justified in coming to such conclusion. Nevertheless, if a portion of the information obtained from Wadhwa Group or certain findings rendered by the Settlement Commission concerning the assessee, that portion of the information ought to have been furnished. Non-furnishing of such information which is relevant information would render the proceedings in violation of principles of natural justice. We agree with the findings of the learned Single Judge that the court cannot decide the correctness of the decision of the assessing officer but would be well-justified in examining as to whether there is any error in the decision making process.

In the light of the facts which we have set out in the preceding paragraphs, we have no hesitation to hold that there has been gross violation of principles of natural justice in the decision making process rendering the entire proceedings to be not sustainable. Therefore, we are inclined to interfere with the order passed by the assessing officer.

For all the above reasons, the appeal is allowed and the order passed in the writ petition is set aside. Consequently, the order disposing of the objection filed by the assessee dated 7th March, 2022 and the assessment order dated 31st March, 2022 are

quashed and the matter is remanded to the assessing officer to take a fresh decision in the matter after furnishing all the details and documents sought for by the assessee in their objections/representations.

We make it clear that the entire information concerning the Wadhwa Group are not required to be furnished to the assessee but that part of the information relevant to the assessee has to be furnished including the findings rendered by the Settlement Commission qua the assessee. Since the assessee has sought for an opportunity of cross-examination of the concerned person, who is stated by the assessing officer to have given a statement against the assessee, the said person should be made available for cross-examination by the assessee and/or their authorised representative. The assessee is directed to co-operate in the de novo proceedings and such proceedings shall be commenced and concluded expeditiously.

With the disposal of this appeal, the connected application (IA No.GA/1/2022) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

