OD-15

APOT/124/2022
IA No.GA/2/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

DILIP KUMAR AGARWAL

-Versus-

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-11 & ORS.

Appearance:
Mr. Subash Agarwal, Adv.
...for the appellant.

Mr. Tilak Mitra, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 27th July, 2022.

The Court : This intra-Court appeal filed by the writ petitioner is directed against the order dated 6th December, 2021 in WPO/1160/2021. The said writ petition was filed challenging an order passed by the Principal Commissioner of Income Tax, the respondent herein, under Section 264 of the Income Tax Act, 1961 (the 'Act' for brevity). The learned Single Bench has noted the operative portion of the order passed by the Principal Commissioner and dismissed the writ petition stating that the writ

Court exercising jurisdiction under Article 226 of the Constitution of India, cannot act as an appellate authority over the order passed by the Commissioner especially when the order is a speaking order and passed after affording opportunity of hearing to the appellant and it is not a case of violation of principles of natural justice or a case of inherent lack of jurisdiction on the part of the authority who passed such order. The legal position has been rightly brought out in the impugned order.

It is the endeavour of Mr. Subash Agarwal, learned Advocate appearing for the appellant to convince this Court that the grounds raised by the appellant in the petition filed under Section 264 of the Act has not been considered by the Commissioner. To test the correctness, we have perused the petition filed by the appellant before the Commissioner dated 3rd March, 2020. Apart from other submissions, it has been stated that the appellant was not supplied with the DDIT report but, by chance, their authorised representative was able to see the report and the report suggests as deposits into banks being sales/turn-over. Further, the assessee also referred to the assessment order in the case of Shri Amit Yadav, proprietor of M/s. 3G Techno, one of the parties whose name finds place in the DDIT report and the assessing officer has treated the total deposits as sales/turn-over and the net profit rate has been presumed as 0.25% of all the deposits treating them as sales while the appellant gave the ratio work out to 0.45%. There were other grounds which were also raised by the appellant and more particularly that no reasons have been assigned by the assessing officer to negate the facts which were placed before him. The commissioner, on receipt of the application under Section 264, has invited comments from the assessing officer which was furnished by communication dated 8.5.2018. After considering the submission made by the appellant and the comments offered by the assessing officer, the Commissioner has taken up the matter for consideration.

On going through the order, we find that it is a very detailed order and all the submissions made by the appellant had been taken note of and, thereafter, the Commissioner proceeded to reject the petition by assigning the following reasons:

> "... *In his original return of income filed on 08/03/2011, the assessee has written in the relevant column of return of Income that he is liable to maintain his accounts as per section 44AA of the I.T. Act whereas he has submitted during the proceedings u/s 264 that he is not maintaining the books of account as stated in Para 9 of the assessee's submissions dated 03/03/2020. The assessee is also not producing any bank statements except the copies provided by the A.O. to him during the assessment proceedings. He has claimed that the said bank accounts are closed, and he has no documents relating to these five bank accounts. Further, he is not in position to obtain the said bank account statements as they are now old. The A.O. had also tried to obtain the bank account statements, but he did not pursue the matter as indicated in his assessment order. But the facts remain that*

> *the above mentioned deposits in his bank accounts are not in dispute. It appears that the assessee is deliberately not furnishing the details of the so-called buyers, suppliers and supporting documents thereof. The assessee has also not explained the sources of various deposits in his five bank accounts with supporting documentary evidences.*
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> *In the facts and circumstances of the case, I am of the considered view that the addition of Rs. 9,73,66,727/- made by the AO as unexplained cash credit u/s 68 of the Income Tax Act in his assessment order appears to be in order. Therefore, I hereby decline to interfere with the said assessment order of the Assessing Officer."*

From the above discussions, it is seen that the assessee did not produce any bank statement except the copies provided by the assessing officer. Further, on analysing the facts, the commissioner opined that the assessee is deliberately not furnishing details of the so called buyers, suppliers and supporting documents therein. Furthermore, the appellant has not explained the series of various deposits in his five bank accounts with supporting documentary evidence.

We thus find that the order passed by the Commissioner is a speaking order after taking note of the facts and circumstances, the learned writ Court was right in not interfering with the said order. For the above reasons, we are not inclined to interfere with the order passed in the writ petition. Accordingly, the appeal (APOT/124/2022) fails and is dismissed.

Consequently, the connected application for stay (GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

S.Das/A.Sadhukhan
AR(CR)