IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/157/2022
IA NO.GA/1/2022

ARUN KUMAR FAMILY TRUST AND ANR.
VS.
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : September 19, 2022.

Appearance:
Mr. Moti Sagar Tiwari, Adv.
... for the appellant.

Ms. Smita Das De, Adv.
...for the respondent.

The Court :- This intra-Court appeal by the writ petitioner trust is directed against the order dated 26th August, 2022 in WPO No.2433 of 2022.

A writ petition was filed challenging an order passed under Section 148 A(d) of the Income Tax Act, 1961 (the Act, in brevity) dated 27th July, 2022. The learned Single Bench had dismissed the writ petition on the ground that the appellant can canvass all the points in the re-assessment proceedings. Challenging the correctness of the said order, the writ petitioner is the appellant before us.

We have heard Mr. Moti Sagar Tiwari, learned Counsel appearing for the appellant and Ms. Smita Das De, learned Counsel appearing for the respondent.

The following facts are to be taken note of to consider as to what relief the appellant would be entitled. The Assessing Officer issued notice dated 24th May, 2022 under Section 148A(b) of the Act to Mr. Arun Kumar Jagatramka, the trustee of the appellant trust. In the said notice, there was an allegation of cash deposits made in the credit card held by the said assessee. The assessee submitted the explanation dated 31st May, 2022 after which the Assessing Officer by order dated 19th July, 2022 under Section 148A(d) of the Act found that it is not a fit case to issue notice under Section 148 of the Act. Accordingly, the proceedings stood culminated.

Identical notice was issued to the appellant trust under Section 148A(b) of the Act dated 27th May, 2022. The trust represented by the trustee submitted their reply after which an order came to be passed on 27th July, 2022 under Section 148A(d) of the Act rejecting the assessee's explanation on the only ground that it does not fully and conclusively explain the transactions. Challenging the same, the writ petition was filed. It is rather surprising to note as to how the Assessing Officer could take two different stands contrary to each other in the case of the trustee and that of the trust. The Assessing Officer accepted the explanation submitted by the trustee and found that it is not a fit case to issue notice under Section 148 of the Act. If that is so, it will equally apply to the case of the appellant trust as well. However, the Assessing Officer without assigning any reason as to why the explanation offered by the assessee trust does not fully and conclusively explain the alleged transaction has rejected the explanation and passed the order under Section 148A(d) of the Act.

Thus, it is clear that there has been total non-application of mind and the order passed against the appellant trust amounts to a clear case of harassment caused to the assessee.

Learned Advocate appearing for the appellant placed reliance on the decision of the High Court of Allahabad in the case of *S R Cold Storage vs. Union of India and 3 others in Writ Tax No. 723 of 2022 dated 11.08.2022*. The allegations against the assessee in the said case were more or less identical to the allegations made against the assessee before us. The Court found that the re-assessment proceeding initiated is malicious and amounts to harassment and causing agony to the assessee and it is a clear case of abuse of the power vested with the Assessing Officer. Ultimately, the appeal filed by the assessee therein was allowed with costs of Rs.50 lakhs payable by the Income Tax department to the Hon'ble Prime Minister National Relief Fund.

Considering the facts and circumstances, we are of the clear view that a different approach could not have been taken by the Assessing Officer against the appellant trust and the order passed under Section 148A(d) of the of the Act dated 27th July, 2022 against the appellant trust is liable to be set aside.

For the above reason, the appeal is allowed.

The order passed in the writ petition is set aside. Consequently, the writ petition is allowed and the order dated 27th July, 2022 passed under Section 148A(d) of the Act against the appellant trust is quashed. No order as to costs.

Consequently, the connected application being IA No.GA/1/2022 also stands disposed of.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Pal/S.chandra