OD–2

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/83/2022
IA NO. GA/1/2022
DINESH KUMAR GOYAL
VS.
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 15, 2022.

Appearance:
Mr. R.N. Dutta, Adv.
Ms. Sutapa Roychowdhury, Adv.
Mr. Abhijit Das, Adv.
... for appellant
Mr. Samarjit Roychowdhury, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for respondent

The Court :- This intra-Court Appeal by the writ petitioner is directed against the order dated 5th September, 2022 in WPO 2442 of 2022.

In the said writ petition the appellant had challenged an order passed by the assessing officer under Section 148A(d) of the Income Tax Act, 1961 (the Act) dated 28th July, 2022 for the assessment year 2014-15. Primarily the order was challenged on the ground of violation of principles of natural justice and procedural irregularity. The learned Single Bench was of the view that the assessing officer having passed an order setting aside certain reasons and simultaneously issuing a notice under Section 148 dated 28th July, 2022, it will be well open to the appellant to raise all contentions in the reassessment proceedings.

Aggrieved by the said order the appellant is before us.

We have heard Mr. R.N. Dutta, learned Advocate as well as Ms. Sutapa Roychowdhury, learned Advocate appearing for the appellant and Mr. Samarjit Roychowdhury, duly assisted by Mr. Soumen Bhattacharjee, learned Advocate appearing for the respondent.

The assessing officer had issued a notice under Section 148(A)(d) of the Act dated 27th May, 2022, wherein it has been stated that credible information has been received through "*insight portal*" stated that the assessee opened a current bank account with Axis Bank Burrabazar Branch, Kolkata in the name of Bengal Steel Sales & Industries, proprietorship firm at Calcutta and this account was linked with three transactions. Further it was stated that during the financial year 2013-14 total credits in the said account was Rs.15,53,19,876/- and the debit was Rs.15,07,94,111/-. It was further stated that such huge transaction is not commensurate with the financial status of the assessee and, therefore, the source of entire deposit remained unexplained in the hands of the assessee. The assessing officer further proceeded to state that the assessee has benefited himself with the said account from the arranged accommodation entries received from unknown sources which is nothing but unaccounted money of the assessee himself not brought to tax and the source of the same remained unexplained during the financial year 2013-14 relevant to the assessment year 2014-15.

With the above allegation the assessee was given two weeks time to respond to the notice and explain as to why notice under Section 148 of the Act should not be issued in that case. The assessee submitted their reply dated 1st June, 2022. Several factual aspects have been highlighted by the assessee, more importantly by stating that no account is maintained by the assessee in Axis Bank Limited, Burrabazar Branch. The assessee would state that they have a bank account with Axis Bank in Dalhousie Branch. Further it was stated that two persons who have been named in the notice issued under Section 148A(b) of the Act are totally strangers to the assessee and the assessee is not aware as to how they have been linked with the assessee's bank account that too when they do not have a bank account in the Axis Bank, Burrabazar Branch. Therefore, the assessee requested an opportunity to cross-examine the said persons before a final decision is taken. Further, the assessee specifically requested for an opportunity of personal hearing wherein the assessee undertook to produce books of accounts and other documents relevant to the said assessment year. Further, the assessee reserved their right to submit a full details of the transaction with the alleged two persons, if they are disclosed and certain other factual details as to how notice is not sustainable. Further the assessee pointed out that denial of personal hearing and cross-examination will be a breach of principles of natural justice and requested to consider such a prayer. The assessing officer did not afford an opportunity of personal hearing to the assessee but proceeded to pass the order under Section 148A(d) of the Act dated 28th July, 2022 which was impugned in the writ.

On a reading of the said order we find after fully extracting the reply given by the assessee the assessing officer proceeded to state that though the assessee has denied having any bank account with the Axis Bank Limited, the department has credible information that the proprietorship concern of the assessee possesses a current account with the Axis Bank, Burrabazar Branch and the account number was also furnished, in which high value transactions were reported. With regard to the prayer for personal hearing the assessing officer states that assessee has made his submission through the reply dated 2nd June, 2022 and the requirement of personal hearing is not desired at this stage. Ultimately, the explanation offered by the assessee was rejected and notice under Section 148 of the Act was issued. In our considered view, the stand taken by the assessing officer to deny an opportunity of personal hearing is not tenable. If credible information is available with the department such information has to be disclosed to the assessee so as to afford them an effective opportunity of submitting a reply. Having not done so, the proceeding is in violation of principles of natural justice.

During the course of submission, learned Advocate appearing for the appellant submitted that notice issued under Section 148A(b) of the Act is barred by limitation. The learned Advocate was candid enough to state that such a ground was not raised by the assessee while their reply to the show-cause notice nor heard before the learned Single Bench. In any event, the limitation being a question of law and touching upon the jurisdiction of the authority to initiate proceedings, it could be raised at any stage of the proceedings and it will not preclude the assessee from doing so, even at the appellate state before us. As we are fully satisfied that there has been violation of natural justice we are inclined to set aside the order passed by the assessing officer under Section 148A(d) dated

28th July, 2022 and restore the matter back to the file of the assessing officer with certain directions.

Mr. Samarjit Roychowdhury, learned standing Counsel placed reliance on the order passed by the Hon'ble Supreme Court dated 2nd September, 2022 in the case of *Anshul Jain Vs. Principal Commissioner of Income Tax & Anr.* in Special Leave to Appeal (C) No. 14823 of 2022. In the said order the Hon'ble Supreme Court had dismissed the appeal filed by the assessee after noting that the order has been passed under Section 148A(d) after noting the objections raised by the petitioner and if the petitioner therein has any grievance which has to be agitated before the assessing officer in reassessment proceedings the Hon'ble Supreme Court in the said case was satisfied that the assessee had adequate opportunity before the assessing officer and, therefore, refused to entertain the challenge to the order passed by the High Court. In the case on hand we have recorded reasons as to how the order passed by assessing officer suffers from violation of principles of natural justice and as to how there has been procedural irregularity. Therefore, the decision of the Hon'ble Supreme Court is distinguishable on facts and cannot be applied to the case on hand.

In the result, the appeal is allowed and the order passed in the writ petition is set aside.

Consequently, notice dated 28th July, 2022 passed under Section 148A(d) of the Act is set aside and the matter is restored to the file of the assessing officer and the assessing officer is directed to afford an opportunity of personal hearing to the assessee and all relevant and credible information to enable the assessee to put forth the defence in an effective manner. The assessee would be entitled to re-agitate their plea that request for cross-examination of those two named persons and the assessee will also be entitled to raise the plea of limitation. After affording an effective opportunity the assessing officer shall proceed to take a decision in the matter by passing a reasoned order on merits and in accordance with law.

Consequently, the notice issued under Section 148A(b) dated 28th July, 2022 shall not be enforced and shall abide by the orders that would be passed by the assessing officer in terms of the above direction. Needless to state that the assessee shall extend full cooperation in the proceeding before assessing officer.

We make it clear that we have not rendered any decision on merits and it will be open to the assessee to raise all points before the assessing officer who shall take a decision in terms of the above direction and in accordance with law.

Affidavit-of-service is kept on record.

Consequently, the application also stands disposed of.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH