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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/184/2022
IA No.: GA/1/2022
RUCHI DALMIA
VS.
INCOME TAX OFFICER, WARD 33(1), KOLKATA & ORS.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 28th September, 2022

Appearance :
Mr. Saurabh Bagaria, Adv.
Mr. Indranil Banerjee, Adv.
Mr.Subrata Mukherjee, Adv.
... for appellant
Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.
...for respondent

The Court : This intra-court appeal filed by the writ petitioner is directed against the order dated September 13, 2022, passed in WPO 2470 of 2022. The said writ petition was filed by the appellant challenging an order passed by the respondent under section 148A(d) of the Income Tax Act, 1961, dated July 26, 2022.

The primary ground on which the said order was put to challenge was by contending that it has been passed in gross violation of principles of natural justice inasmuch as the replies given by the appellant to the notices issued under section 148A(b) of the Act dated 8th June, 2022 and 13th June, 2022 were not considered. On perusal of the order dated July 26, 2022 under section 148A(d) of the Act, we find that the Assessing Officer has referred to the replies given by the appellant dated 8th June, 2022 and 13th June, 2022, but has observed that the said replies is not a valid submission on account of lack of authorisation. In our considered view, taking such an approach will result in unnecessary further litigation and in the event the Assessing Officer was of the view that proper authorisation was lacking, an opportunity should have been granted to the assessee to place before him the appropriate authorisation so that a decision can be taken on merits. Had that procedure been adopted, in all probabilities the present litigation would not have arisen.

Be that as it may, we do not wish to examine as to whether the replies were duly authorised to be filed or not, since a decision should be taken on merits and in accordance with law and a hypertechnical approach should be avoided.

For such reason, we are not inclined to interfere with the order dated July 26, 2022 and remand the matter back to the Assessing Officer for fresh consideration.

In the result, the appeal stands allowed and consequently, the order dated July 26, 2022 passed under section 148A(d) of the Act is set aside and the matter is remanded to the Assessing Officer for a fresh decision on merits and in accordance with law.

The Assessing Officer is directed to afford an opportunity of personal hearing to the assessee or his authorised representative, take note of their submisions dated 8th June, 2022 and 13th June, 2022 and the appellant shall also formally file a proper authorisation before the Assessing Officer and thereafter a reasoned order be passed.

The learned standing Counsel for the respondent pointed out that before the learned Writ Court he had contended that the assessee could agitate all issues in the reassessment proceedings under section 148 of the Act and such submission was predicated by relying upon the decision of the Hon'ble Supreme Court in *Anshul Jain vs. Principal Commissioner of Income Tax & Anr. in SLP(C) No(s). 14823/2022*.

In our view, we need not travel that far to take note of the submission and render a decision on merits as we are satisfied that the matter has to be reconsidered by the Assessing Officer on the ground of violation of principles of natural justice as pointed out by us.

Therefore, the legal issue which the learned standing Counsel for the revenue seeks to canvass is left open.

The stay application stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

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