IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8713 of 2013

Bijoy Anand Mahanti .... ***Petitioner***

Mr. S.K. Pattanaik, Senior Advocate

-versus-

Commissioner of Income Tax, Bhubaneswar and another .... ***Opposite Parties***

Mr. T.K. Satapathy, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
24.02.2022

Order No.

06. 1. The challenge in the present petition is to a reassessment order dated 31st March, 2013 under Section 147 read with Section 143(3) of the Income Tax Act, 1961 (IT Act) for the Assessment Year (AY) 2005-06.

2. In the present case, notice was issued to the Petitioner under Section 148 of the Act on 23rd March, 2012. Surprisingly, the order of Assessment indicates the dates of hearing to be 2nd March and 7th March of 2012 and 26th March, 2013. There could not have been two dates of hearing prior to the notice itself. This itself indicates a lack of application of mind.

3. Secondly, it is not disputed by the Department that despite the Assessee writing to the Assessing Officer (AO) on 5th April, 2012

requesting for reasons for reopening of the assessment, those reasons were never furnished.

4. Thirdly, it is pointed out by learned counsel for the Petitioner-Assessee that an adequate opportunity to explain to the AO, the version of the Assessee in response to such reasons has been denied to the Assessee.

5. The Court is satisfied that there are procedural irregularities that warrant a fresh order of reassessment order to be passed after giving the Assessee reasons for reopening of the assessment.

6. In that view of the matter, the impugned assessment order is hereby set aside and the following directions are issued:

(i) On or before 4th April 2022, the AO will furnish the Assessee the reasons for reopening of the assessment;

(ii) Consistent with the rule in ***GKN Driveshaft*s *(India) Ltd*. *v. Income Tax Officer (2003) 259 ITR 19(SC)***, the Assessee will be given time till 2nd May, 2022 to submit his objections to such reopening of assessment;

(iii) An order on such objections will be passed by the AO not later than 5th June, 2022;

(iv) If the AO decides to proceed with the re-assessment, he will do so after duly issuing notice to the Assessee, giving him a hearing and then passing a fresh re-assessment order in accordance with law, within two months thereafter.

7. In view of the above order, the notice dated 26th March, 2013 under Section 271(1)(c) of the Act is hereby set aside. The consequent demand notice at Annexure-4/A is also set aside.

8. The writ petition is accordingly disposed of.

9. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda