Item No.5.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 22.03.2023

DELIVERED ON: 22.03.2023

CORAM:
THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 285 of 2023
With
I.A. No.CAN 1 of 2023

Accord Capital Markets Private Limited.
Vs.
Income Tax Officer, Ward No.10(2), Kolkata & Ors.

Appearance:-

Mr. Avra Mazumder,
Mr. Kausheyo Roy .... for the appellant.

Mr. Smarajit Roy Chowdhury,
Mr. Prithu Dudhoria ... for the respondents.

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

1. We have heard Mr. Avra Mazumder, learned Advocate appearing for the appellant and Mr. Smarajit Roy Chowdhury, learned senior standing counsel appearing for the respondents at length.

2. This intra-Court appeal filed by the writ petitioner is directed against the order dated 17th January, 2023 in WPA No.29015 of 2022. In the said writ petition, the appellant had challenged the order passed by the assessing officer under Section 148A(d) of the Income Tax Act, 1961 (for brevity, "the Act") dated 29th July, 2022 and the consequential notice issued under Section 148 of the Act dated 30th July, 2022.

3. The primary ground on which the impugned order was challenged was by contending that it is in total violation of the principles of natural justice inasmuch as the reply given by the assessee dated 27th June, 2022 and the reply dated 30th June, 2022 were not even considered. As could be seen from the relevant documents, these two replies have been uploaded and there is proof to show that the department had received those replies. Unfortunately, the assessing officer while passing the order dated 29th July, 2022 has referred to only the assessee's letter dated 15th June, 2022, which is a letter seeking adjournment of the proceedings to enable it to submit the reply.

4. Thus, it is seen that the assessment order has been passed in violation of the principles of natural justice, which calls for interference.

5. In the result, the appeal is allowed, the order passed in the writ petition is set aside and the order passed under Section 148A(d) of the Act dated 29th July, 2022 and the consequential notice issued under Section 148 of the Act dated 30th July, 2022 are set aside and the matter is remanded to the assessing officer with a direction to the assessing officer to take note of the replies given by the assessee dated 27th June, 2022 and 30th June, 2022 and afford an opportunity of personal hearing either in person or by video conferencing and pass a reasoned order on merit and in accordance with law.

6. There shall be no order as to costs.

7. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)