

28.04.2023
Ct. No.1
Item No.04
RP/KS

**M.A.T. 648 of 2023
With
IA No.CAN 1 of 2023**

**Krishna Tissues Pvt. Ltd.
-Vs.-
Union of India & Ors.**

Mr. J.P. Khaitan
Mr. Sanjay Bhaumik
Mr. Saumya Kejriwal
Ms. Ananya Rath
Mr. G.S. Gupta

.....For the Appellants

Mr. Om Narayan Rai

.For Respondent

1. This intra-Court appeal is directed against the order dated 3rd April, 2023 passed by the learned Single Bench in WPA 6105 of 2023 by which the writ petition was dismissed stating that the reassessment order has already been passed under Section 147 of the Income Tax Act, 1961 (for short “the Act”) and what was impugned in the writ petition was an order passed under Section 148A(d) of the Act dated 25th March, 2022 and the reassessment order is not being the subject matter of challenge in the writ petition, the Court held that it cannot go into the merits of the reassessment order.

The correctness of the order passed in the writ petition is being challenged in this appeal.

2. We have elaborately heard the submission made on behalf of the learned counsel for the parties.
3. Though the facts are all complicated, all that we are to see that the appellant had been afforded reasonable opportunity of hearing by the authority in the reassessment proceeding. The reassessment proceeding commenced with issuance of show cause notice under Section 148A(b) of the Act on 11.03.2023. In that show cause notice various allegations have been made. Screenshot of certain documents have been extracted apart from other information. On receipt of such notice, the assessee submitted a letter dated 21st March, 2022. Though ultimately the assessee pleads that reopening process should be dropped but in the body of the said letter the assessee has pointed out that the information which has been mentioned in the show cause notice does not relate to the assessee company i.e. Krishna Tissues Private Limited. Information relates to some “Krishna” or “Krishna Tissues” and on surmises and suspicion it has been alleged that Krishna Tissues is Krishna Tissues Private

Limited, the assessee herein. Further, the assessee stated that the assessing officer places reliance on the statement of Shri Anum Majee and Shri Anjani Kumar and pointed out that the statement of the said persons along with the opportunity of cross-examination has not been provided to the assessee. Further, it is stated that certain incriminating documents were analyzed pertaining to sale and transport of coal and these documents on which reliance is placed has not been provided to the assessee. Further, it was pointed out that relying on information, which was gathered through various sources, without providing the assessee a copy of the same, violates the principles of natural justice. The assessing officer on receipt of the said letter dated 21st March, 2022 did not reject the request or accede to the request made by the assessee but proceeded to pass an order under Section 148A(d) dated 25.03.2022 which was impugned in the writ petition. Interestingly, in the said order the assessing officer probably was of the view that an opportunity of hearing was required to be given to the assessee and thereafter stated that if the assessee wishes to cross-verify/cross-examine the evidences in respect of the said information,

they may do the same after taking prior appointment from the assessing officer. After having stated this the assessing officer proceeded to hold that from the surveillance data and the analysis by the Investigation Directorate it is evident that the escapement of Income by the assessee has happened in this case. Further, the assessing officer stated that full information has already been provided to the assessee, it can be clearly seen that detailed enquiry has been done and only after that exhaustive report has been prepared by the Investigation Directorate and further analyzed by the assessing officer before issuing such show cause notice after obtaining prior approval from the competent authority. Thus, we find inconsistency in the stand taken by the assessing officer. However, if the assessing officer was of the view that opportunity of cross-examination/cross-verify the evidences has to be granted to the assessee that should have been done prior to passing of the order under Section 148A(d) of the Act.

4. Apart from that the allegation pertaining to information having been fully provided to the assessee appears to be not correct. The assessee on receiving the order passed under

Section 148A(d) of the Act, submitted a representation on 18th April, 2022 pointing out various issues and stating that the fundamental principles laid down for reopening an assessment by incorporating Section 148A of the Act has been given a go-bye. The assessing office issued notice under Section 142(1) of the Act dated 2nd February, 2023 which contains annexures and on receipt of the same the assessee submitted a reply on 13th February, 2023 once again pointing out that the reassessment proceeding right from the inception is bad in law. No reply is given to the assessee but another notice under Section 142(1) dated 2nd March, 2023 has been issued along with annexures. Thereafter, the assessee submits another representation on 8th March, 2023 pointing out once again that the statements of a third party having not been given and opportunity to cross-examine those third parties is not being provided to the assessee. The assessee also specifically informed that they have been left with no option but to file a writ petition before the Court and, accordingly, a writ petition was filed on 9th March, 2023. However, the matter was listed on 17th March, 2023 for hearing but

could not be taken up for hearing. Ultimately on 13th April, 2023 the writ petition was taken up for hearing. Thereafter, the assessing officer gave reply dated 16.03.2023 to the representation/objection given by the assessee dated 13.02.2023, which contains annexures, which according to the assessee contains the details which were not disclosed at any earlier point of time. The reply dated 16.03.2023 contains annexures. Ultimately the order was passed on 29th March, 2023 when the writ petition was pending. The assessee sought to bring the reassessment order on record by filing a supplementary affidavit. However, the learned writ Court dismissed the writ petition stating that the reassessment proceeding is not the subject matter of challenge and the writ petition cannot be entertained.

5. On going through the reassessment order, we find in paragraph 6 that the assessing officer was fully aware of the writ petition, which was pending before the Court and yet to be taken up for hearing and the assessing officer would observe that there is no order passed by this Court restraining him or directing him to keep abeyance from the proceeding and by referring

to Section 153 of the Act the assessment has been completed.

6. Various dates have been stated in the preceding paragraphs to show how the assessee has been dealt with by the assessing officer in the matter. We have not examined the merits of the reassessment proceeding but we are confined to the aspect that there has been violation of principles of natural justice. The manner in which the reassessment proceeding has been taken through by the assessing officer is thoroughly flawed. The fundamental error committed by the assessing officer in not providing the third party information, which was the basis for issuance of the show cause notice apart from making available those third parties for cross-examination by the assessee when statements recorded by them have been relied upon for issuance of the show cause notice, more particularly, in spite of specific request made by the assessee in this regard. That apart, after passing the order under Section 148 of the Act the assessing officer could not have stated that if the assessee wishes to cross-verify/cross-examine the evidences they may do so after taking prior appointment from him. In fact, such

opportunity should have been provided prior to passing of the order under Section 148A of the Act.

7. Thus, we are fully convinced that the procedure adopted by the assessing officer is wholly incorrect and there has been serious violation of principles of natural justice committed by the assessing officer in the entire process. Therefore, the order passed under Section 148A(d) of the Act and the consequential reassessment order have to be necessarily quashed and the matter should be restored to the position of show cause notice issued under Section 148A(b) of the Act with consequential directions. In the result, the appeal is **allowed** and the order passed in the writ petition is set aside and the writ petition is allowed and the reassessment order passed under Section 147 of the Act is quashed. The matter is remanded back to the assessing officer by restoring the matter to the stage of show cause notice under Section 148A(b) of the Act. The assessing officer is directed to furnish documents sought for by the assessee and make available such of those persons, whose statements have been recorded, for cross-examination after complying with the principles of natural justice and

proceed to finalize the matter in accordance with law. Connected application, if any, is disposed of.

8. Since the facts are complicated and various issues are pointed out by the assessee, it will be a fit case that opportunity of personal hearing can be granted to the authorized representative of the assessee. The assessee is not permitted to raise the question of limitation when the reassessment proceeding is done afresh.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)