

03 18.08.2023
RP Ct. No. 01
AN

MAT 770 of 2023
with
IA No. CAN 1 of 2023

Binay Ranjan Ray
Vs.
Union of India & Ors.

Mr. Varun Kothari
Mr. Asish Choudhury
Ms. Muskan Bangani

... For the Appellant

Mr. Aryak Dutt
Mr. Soumen Bhattacharya

... For the U.O.I.

1. This intra-Court appeal filed by the petitioner is directed against an order dated 5th April, 2023 passed in WPA 6563 of 2023. The said writ petition was filed challenging an assessment order dated 3rd February, 2023 passed under Section 147 read with Section 144(B) of the Income Tax Act, 1961 relating to the assessment year 2015-2016. The appellant in the writ petition had raised several grounds on the factual matrix as well as legal issues. Apart from stressing on the point that the assessment order has been passed in violation of the principles of natural justice inasmuch as the reply which was uploaded by the appellant on 24.01.2023 in response to the notice issued under Section 142(1) of the Act dated 11th January, 2023 has not been considered by the assessing officer while completing the assessment on 3rd February, 2023 in which assessing officer has recorded as if no reply has been submitted by the assessee. Further, it is submitted that the assessing officer did not take note of the

reply/objection filed by the appellant dated 25th January, 2023 to the show cause notice dated 23rd January, 2023 in which all factual issues have been clarified. On this ground, the appellant has sought for setting aside of the assessment order. Learned Single Bench by the impugned order held that the appellant should avail an alternate remedy by filing an appeal before the Commissioner of Income Tax and accordingly dismissed the writ petition Aggrieved by the same the appellant has preferred the present appeal.

2. When we have heard the matter on 11th August, 2023 we issued direction to the respondent department to clarify as to whether the e-response to the notice dated 11th January, 2023 had been received by the department prior to passing of the assessment order dated 3rd February, 2023.

3. Learned standing counsel appearing for the respondent department on instruction has placed the same before this Court. After elaborately considering the assessment proceedings, we find that the appellant/assessee has been unnecessarily harassed by the Faceless Assessment proceeding by repeatedly issuing notice to the assessee, who is an individual retired medical practitioner. It is not in dispute that the assessee had cooperated with the assessment proceeding and responded to the notice issued under Section 142(1) of the Act dated 11th January, 2023 but the only mistake committed by the appellant/assessee is to upload his reply on 24th January,

2023. Though the reply is dated 19th January, 2023, that is beyond the due date for submission which is fixed by the assessing officer on 16.01.2023. Even assuming that there was a marginal delay in uploading the e-response to the show cause notice dated 11th January, 2023 issued under Section 142(1) of the Act, nothing precluded the assessing officer to take note of the said reply since thereafter the assessing officer did not complete the assessment but had issued a second show cause notice dated 23.01.2023 proposing variations. The due date for filing reply was fixed as 28th January, 2023 and the appellant well before the due date has submitted his objection/reply on 25.01.2023 and uploaded the response on the very same date. Therefore, nothing prevented the assessing officer from going through the reply and perusing all the documents and particulars submitted by the appellant.

4. On perusal of the assessment order dated 3rd February, 2023, we find that the approach of the assessing officer is absolutely perverse. The assessing officer has pointed out three different issues and from paragraph 3.4 of the assessment order dated 3rd February, 2023 we find no adverse inference has been drawn on the issue no.1. So far as the issue no.2 is concerned, though the assessing officer points out that there is hardly a marginal difference between the market value of the property purchased by him and the stamp duty value, no adverse inference has been drawn against the assessee on the said issue. On the 3rd issue the assessing officer has not drawn any adverse

inference but, however, in a most perverse manner, in all the three issues the assessing officer states that the penalty proceedings under Section 271(1)(c) of the Act is to be initiated separately for concealment of income. The said finding of the assessing officer is not supported by any reasons. In the absence of any adverse inference being drawn by the assessing officer on any one of the three issues, the question of coming to a conclusion that the assessee has concealed his income does not arise. Further, on the issue no.2, as noted, the difference in the market value and stamp duty value of the property is very marginal being less than Rs.1,35,000/-. Probably the assessing officer realizing that the marginal difference is of no significance did not draw any adverse inference. Furthermore, the assessing officer would contend that return of the income was filed by the assessee only after the notice has been issued under Section 148(1). To be noted that the assessing officer has accepted the return which was presented by the assessee and based on the return computation has been done. Therefore, the assessing officer at this juncture of the matter cannot fault the appellant for having filed the return of the income after having received the notice under Section 148 of the Act. Therefore, the conduct of the assessee in filing the return after he received the notice under Section 148 of the Act cannot give the cause of action for initiating the penalty proceedings. Thus, the entire assessment order is perverse in nature and unsustainable in the eye law.

5. In the result, the appeal along with the connected application and the writ petition are all stand **allowed**. The impugned order dated 3rd February, 2023 is quashed. Consequently, the proposal to initiate penalty proceedings under Section 271(1)(c) of the Act by issuing the notice dated 3.2.2023 is quashed. The assessing officer is directed to accept the return of income filed by the assessee in its entirety and proceed to complete the assessment within a period of three weeks from the date of receipt of the server copy of this order.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)