09.06.2023
Item No.14
gd/ssd

MAT/857/2023
IA NO: CAN/1/2023
RAJESH KUMAR AGARWAL
VS
UNION OF INDIA AND ORS.

Mr. Himangshu Kumar Ray,
Mr. Paban Kumar Ray,
Mr. Subhasish Poddar,
Ms. Shiwani Shaw
..for the Appellant.

Mr. Tilak Mitra
..for the Respondent.

1. This intra court appeal by the writ petitioner is directed against the order passed by the learned Single Bench dated 1st May, 2023 in WPA 6956 of 2023 dismissing the writ petition filed challenging the order passed by the respondent under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the said Act for brevity). The order was on the ground of violation of principles of natural justice.

2. The learned Writ Court declined to interfere with the said order on the ground that the appellant can raise all issues in the re-assessment proceedings.

3. Aggrieved by such order, the appellant has preferred the present appeal.

4. We have perused the show cause notice issued by the Assessing Officer under Section 148A(b)

dated 22.03.2022 and we find that the allegation made against the appellant/assessee is to the following effect:

> "The assessee is stated to have Allegedly purchased of Rs. 31,80,194/- form shell entity Baliram Sharma and M/s. D.S. Bitumix correspondingly on other relevant expenses are spurious and attempted to evade the revenue through a colourful mechanism."

5. The appellant had submitted his response within the date fixed, namely, 29th March, 2022 and has also enclosed income tax returns and other documents.

6. Admittedly, no opportunity of personal hearing was granted to the assessee. In the order dated 6th April, 2022 passed under Section 148A(d) there is a reference to certain transactions done by two companies, namely, M/s. Devyansh Dealcom Ptrivate Limited and M/s. Eastern Sales India.

7. Admittedly, in the show cause notice there was no such allegation concerning these two companies qua the appellant/assessee. Furthermore, we find that the hearing was not fixed by the Assessing Officer on 29.03.2022. But the show cause notice states that the e-response should be filed by the assessee not later than 29.03.2022. Therefore, this is also an error committed by the Assessing Officer. The Assessing Officer states that the assessee did not submit documents in support of their claim. This finding also appears to be incorrect since there are enclosures along

with the response submitted by the assessee dated 29th March, 2022.

8. Thus, we are of the view that that there has been violation of principles of natural justice and the matter has to be remanded back to the Assessing Officer for a fresh decision.

9. Accordingly, the appeal is allowed. The order passed in the writ petition is set aside. The writ petition is allowed. The order passed under Section 148A(d) of the Act dated 6th April, 2022 is set aside and the matter is remanded back to the Assessing Officer for fresh consideration. The Assessing Officer is directed to furnish all relevant information concerning those two companies and other information wherein the assessee has been roped in and 15 days' time should be granted to the assessee to submit short additional response. Thereafter an opportunity of personal hearing be granted and the fresh order be passed on merits and in accordance with law.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)