08.12.2023
Item No.4
gd/ssd

MAT/1288/2023
IA NO: CAN/1/2023
REVITHI VYAPAAR PRIVATE LIMITED
VS
ASSISTANT COMMISSIONER OF
INCOME TAX CIRCLE 7(1) KOLKATA & ORS.

Mr. Ranjeet Kumar Murarka, Sr. Advocate,
Mr. S.D. Verma,
Mr. Vivek Murarka,
Mr. Dibanath Dey
..for the Appellant.

Mr. Tilak Mitra
..for the Respondent.

1. This intra court appeal by the petitioner is directed against the order dated 26.6.2023 in WPA 13022 of 2023.

2. By the said writ petition the appellant had challenged an assessment order passed under Section 147 read with Section 144B of the Income Tax Act, 1961 (The Act) dated 11.5.2023. In the said writ petition the appellant has challenged the correctness of the reopening of the assessment by issuance of notice under Section 148A(b) of the Act dated 26.5.2022.

3. In our considered view, if the appellant was aggrieved by such a show cause notice on the grounds which are now being canvassed, the appellant should have been diligent enough to put forth the challenge to the said show cause notice at the earliest point of time.

4. However, the appellant had submitted its reply after which the order has been passed by the authority under Section 148A(d) of the Act and thereafter a draft assessment order was served on the appellant and an opportunity was granted to the appellant to submit its objections.

5. Therefore, at this distance of the time, we are not inclined to entertain a challenge and consider the grounds which have been canvassed in the writ petition qua the validity of the proceedings initiated pursuant to the notice under Section 148A(b) of the Act dated 26.5.2022.

6. However, we are convinced with the submission by Mr. Ranjeet Kumar Murarka, learned senior advocate that the assessing officer after serving the draft assessment order had granted an opportunity to the appellant to submit its objections.

7. The appellant on 08.5.2023 requested for grant of an adjournment for a period of 15 days.

8. The assessing officer neither acceded to such request nor rejected that request, but proceeded to pass the assessment order dated 11.5.2023 recording as if the appellant has not submitted any reply/counter to the draft assessment order.

9. This, in our view, is incorrect and it would tantamount to violation of principles of natural justice.

10. Therefore, to that extent alone, we are inclined to grant partial relief to the appellant.

11. However, we make it clear that all legal issues, which have been canvassed by the appellant in the writ petition, are left open and the appellant will be at liberty to raise all contentions before the assessing officer which shall be considered and thereafter a speaking order be passed.

12. For the above reason, this appeal is disposed of by directing the appellant to treat the assessment order dated 11.5.2023 as a draft assessment order and submit its objections within 15 days from the date of receipt of the server copy of this order.

13. In the said objections the appellant would be entitled to canvass all issues which have been raised before this court as well as before the writ court and on receipt of the objections, the assessing officer shall take a fresh decision on merits and in accordance with law.

14. Accordingly, the appeal stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)