13 17.10.2023
Ct. No. 01
AN

MAT 1308 of 2023
(CAN 1 of 2023)
GSP Piling Constructions Private Limited & anr.
Vs.
Assistant Commissioner of Income Tax,
Central Circle-4(3) & ors.

Mr. R. N. Dutt
Ms. Sutapa Roy Chowdhury
Ms. Aratrika Roy
... for the appellant

Mr. Vipul Kundalia
Mr. Prithu Dudhoria
Mr. Anurag Roy
... for the respondents

1. This intra-Court appeal by the writ petitioner is directed against the order dated 30.06.2023 passed in WPA 14155 of 2023. In the said writ petition the appellant had challenged the order passed under Section 148A(d) of the Income Tax Act, 1961 and the final assessment order under Section 147 of the Act dated 31.03.2023 for the assessment year 2018-2019 under Section 148A(b) of the Act dated 18.04.2022 is a non-speaking order. Partly the appellant assessee is to be blamed for not giving reply to the show cause notice issued under Section 148A(b) of the Act inspite of three adjournments being granted. Be that as it may, while affirming the proposal in the show cause notice, the authorities are expected to record reasons, at least brief reasons, and if not brief reasons, as to why the proposal in the show cause notice is to be confirmed despite the assessee submitting the reply. The reading of the order dated 18.04.2022 gives an impression that on account of

default of the assessee in not submitting the reply to the show cause notice, it was a fit case to issue notice under Section 148 of the Act. This is our considered opinion would not be the appropriate procedure. Since even in an ex parte proceedings, the authority has to record reasons for coming to a conclusion as to why the case has been taken out for re-opening of the assessment.

2. Therefore, in the light of the above, we are of the view that the proceedings has to be re-done with the matter by giving a fresh opportunity to the appellant assessee to submit a reply to the show cause notice under Section 148A(b) of the Act, the orders which are impugned in the writ petition and set aside. The matter is restored to the file of the assessing officer to the stage of the show cause notice under Section 148A(b) of the Act. The appellant assessee is directed to file their reply within 20 days from the date of receipt of the server copy of this order. On receipt of such reply, the assessee shall afford an opportunity of personal hearing either in person or through video conferencing and pass fresh orders on merits and in accordance with law. The appellant is precluded from raising any issue with regard to the limitation aspect.

3. In the light of the above, the appeal stands **disposed of**.

**(T. S. Sivagnanam)**
**Chief Justice**

**(Hiranmay Bhattacharyya, J.)**