17.10.2023
Item Nos.10
RP/AN
Ct. No.1

FMA 775 of 2023
+
IA No.CAN 1 of 2023

Shreesatya Metal & Alloys Private Limited
Vs.
Assistant/Deputy Commissioner of Income Tax, Circle 5(1), Kolkata & Ors.

Mr. Abhratosh Majumder, sr. adv.
Mr. Avra Majumder
Mr. Ramesh Kumar Patodia
Ms. Megha Agarwal
Mr. Kaushik Roy
Mr. Samrat Das
Ms. Illina Dey
.....for the Appellant

Mr. Prithu Dudhuria
.....for the respondents

1. This intra-Court appeal is directed against the order dated 21st June, 2023 passed in WPA 12586 of 2023. In the writ petition the appellant had challenged the assessment order passed under Section 148A(d) of the Income Tax Act, 1961 dated 27th July, 2022 for the assessment year 2016-2017 primarily on the ground of violation of principles of natural justice. Several grounds were taken in the writ petition challenging the said order and consequential proceedings primarily on the ground that there has been violation of principles of natural justice.
2. We have elaborately heard the learned senior advocate for the appellant and perused the materials placed on record. We find that at every stage of the

matter there has been violation of principles of natural justice. However, for the purpose of disposal of this appeal we need not to record all this fact but suffice to note that though personal hearing through video conferencing was scheduled to be held on 19th May, 2023 by intimation date 17th May, 2023 but the assessing officer thought it fit to intimate the appellant on 25th February, 2023. Thereafter, no opportunity was granted to the appellant to make submission in person or through video conferencing. Thus, we sufficiently hold that there has been violation of principles of natural justice. The appellant has pleaded before the authority that opportunity may be granted to the appellant to put forth its submission. However, this appears to have not been done and the assessing officer has also proceeded to complete the assessment and the penalty proceeding has also been initiated. Thus, we have satisfied that the writ petition should be heard on merits after affidavits are filed by the respondent or at least the respondent may be heard in the matter with regard to the technical objection raised by the appellant. Therefore, we are inclined to interfere with the impugned order. Accordingly, the appeal is allowed and the order passed in the writ petition is set aside and the writ petition is restored to the file of the learned single Bench. The respondent is directed to file affidavit-in-opposition within six weeks from date. Reply, if any, be filed within two weeks thereafter.

3. List the writ petition before the Single Bench after a period of eight weeks and till the first hearing of the writ petition is commenced by the learned Single Bench, the order impugned in the writ petition as also all consequential proceeding shall remain stayed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)