WPA 18683 OF 2023

16.08.2023
Sl no.15
Ct no. 2
P.M.

Gee Bee Nirman Co Private Limited

- Vs –

Income Tax Officer, Ward 5(1), Kolkata & Ors.

Mr. Avra Mazumder,
Mr. Kausheyo Roy
… for the petitioner

Mr. Aryak Dutt.
… for the respondent No. 1

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned final assessment order dated 24th May, 2023 under Section 147 read with Section 144B of the Income Tax Act, 1961 relating to assessment year 2017-2018 on the ground that while passing the aforesaid impugned final assessment order, the assessing officer has relied on the statement of one Sri Mukesh Banka under Section 131 of the Act but petitioner was not allowed to cross-examine that witness. The aforesaid impugned order is an appellable order under the statute.

On perusal of the aforesaid impugned assessment order and particularly paragraph 2 of such order I find that the assessing officer has passed the aforesaid appellable assessment order by recording reasons in detail and particularly taking note of paragraph 2 of the aforesaid impugned assessment order I find that the assessing officer could not be faulted since he has tried his level best to facilitate the cross-examination of the said witness and in addition the assessing officer has also recorded that he has completed the assessment on the basis of records available to him and it is not a case that while passing the aforesaid impugned assessment order the assessing officer has relied simply and only on the statement of the aforesaid witness. Paragraph 2 of the impugned order which is relevant is quoted as hereunder :

"2. As the assessee has requested to cross examine Sh. Mukesh Banka, accordingly, summons u/s 131 of the I. T. Act, 1961 were issued to Sh. Mukesh Banka on 03.05.2023 fixing the time 12.15 PM on 09.05.2023. Copy of the same was sent to the assessee for cross examination. The assessee has claimed that the link of VC was not shown to him. Therefore, summons u/s 131 of the I.T. Act, 1961 were again issued to Sh. Mukesh Banka on 10.05.2023 fixing the time 12.15 PM on 11.05.2023.

Copy of the same was again sent to the assessee for cross examination. The assessee has attended the VC at the given time but Sh. Mukesh Banka has not attended the same. Thus, cross examination couldn't be done. Sh. Mukesh Banka furnished a reply on 11.05.2023 requesting to give some time for health issue and the assessee also submitted a reply requesting to provide fresh link and password to join VC as Sh. Ukesh Banka has joined VC at the given time. It is worthwhile to mention here that Sh. Mukesh Banka has not responded the summons issued on 03.05.2023 for 09.05.2023 and now on 11.05.2023 requesting to give some time for health issue. At this juncture, it is not possible to give some more time for cross examination as the proceeding in this case is going to be barred by limitation on 31.05.2023. The statement of Sh. Mukesh Banka was recorded on oath on 30.05.2018 and 19.07.2018 which are very much clear in respect of modus operendi to provide accommodation entries. On perusal of statement of Sh. Mukesh Banka recorded on 19.07.2018 and 30.05.2018, it is clear that M/s. Gee Bee Nirman Co. Pvt. Ltd. is a beneficiary to whom the accommodation entries were provided by paper/shell company M/s. Blossom Trexim Pvt. Ltd. controlled and managed by *him. Accordingly, the assessment is being completed on the basis of material available on records."*

This writ Court is not a fact finding authority and cannot act as an appellate authority to reappreciate the evidence and come to a different conclusion and this is not a case of patent violation of principle of natural justice.

In view of the discussion made above this writ court being WPA 18683 of 2023 is dismissed on the ground of availability of alternative remedy by way of appeal.

(Md. Nizamuddin, J.)