

17.11.2023
Item No.05
RP/AN
Ct. No.1

MAT 1568 of 2023
+
IA No.CAN 1 of 2023
Smt. Rachna Singhi
Vs.
Income Tax Officer, Ward 30(1), Kolkata & Ors.

Ms. Manju Agarwal
Ms. Anju Manot
.....for the Appellant

Ms. Smita Das De
..for the respondents

1. This intra-Court appeal filed by the appellant is directed against the order dated 12th June, 2023 passed in WPA 10215 of 2023. In the said writ petition the appellant/assessee had challenged an order passed by the Assessing Officer under Section 148A(d) of the Income Tax Act, 1961 (for short the “Act”). The writ petition has been dismissed on the ground that the appellant/assessee can raise all contentions in the re-assessment proceeding pursuant to the order passed under Section 148A(d) of the Act. Under normal circumstances, the Court would not have entertained the contentions raised by the appellant. However, the peculiar facts and circumstances of the case has convinced the Court that the order dated 30th March, 2023 passed under Section 148A(d) of the Income Tax Act, 1961 calls for

interference. The conclusion is supported by advancing the following reasons.

2. Initially, an enquiry was conducted under Section 148A(a) of the Income Tax Act, 1961. In such enquiry the assessee had participated and produced all documents. However, the Assessing Officer thought it fit to issue notice dated 17th February, 2023 under Section 148A(b) of the Act. Two issues were pointed in the said notice : (i) there is cash deposit in the current account to the tune of Rs.819.16 lakh; (ii) there is cash withdrawal in account to the tune of Rs.0.44 lakh. The assessee was called upon to submit her reply. The assessee has submitted its reply on 24th February, 2023 and also enclosed necessary documents in support of her stand. E-response has also been uploaded within the date stipulated. In the gist of the e-response the assessee had pointed out that initially the assessee, namely, M/s. Luxmi Service Station was a partnership firm comprising of the partner Smt. Rachna Singhi and her father. After demise of her father she became the sole proprietress of the firm as the mother of the appellant has pre-deceased her father. The assessee, namely, M/s. Luxmi Service Station is a dealer of the Hindustan Petroleum Corporation Limited (HPCL). This fact was brought to the notice of HPCL and a memorandum of

agreement was entered into between the assessee and HPCL by which the assessee was recognized as the sole-proprietress of M/s. Luxmi Service Station. The bank account of the assessee has been retained with the very same bank and upon necessary documents being produced by the assessee to the bank, the bank has accepted the documents and converted the bank account as a proprietorship account. However, the PAN number of the assessee has been included instead of the PAN number of the erstwhile firm. The assessee has also pointed out that the cash deposit is only Rs.409.58 lakhs and not Rs.819.16 lakhs. This aspect of the matter appears to be accepted by the Assessing Officer. However, curiously enough the assessee has been non suited by the Assessing Officer and held that the assessee has not produced any deed of dissolution of the firm. The Assessing Officer has lost sight of the fact that the partnership firm stood dissolved on account of demise of the assessee's father and not on account of any voluntary dissolution. Therefore, to insist upon a deed of dissolution is an action which is incapable of being performed. In any event, it is the HPCL who has recognised the assessee as a proprietor after having accepted the fact that the assessee's father is no more and the assessee has been recognized as a

proprietor and a memorandum of agreement has been entered into between the assessee and HPCL. Therefore, the Assessing Officer has no jurisdiction to sit over the said action initiated by HPCL in recognizing the assessee as proprietor of M/s. Luxmi Service Station. The other reasons stated by the Assessing Officer is that the PAN of the partnership firm has not been deactivated. As noted in the e-response filed by the assessee to show cause notice, the assessee has specifically made a prayer to de-activate the PAN issued in the name of the partnership firm. In any event, such de-activation has not taken place. Since the bank has recognized the assessee as the sole proprietor of M/s. Luxmi Service Station and PAN of the assessee has been substituted in the said bank account instead of PAN of the partnership firm, which stood automatically dissolved by operation of law, there is no ground made out for reopening of the assessment.

3. In the result, the appeal and the connected application are allowed. Consequently, the writ petition is allowed and order passed under Section 148A(d) of the Act is set aside and the entire reopening proceeding is quashed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYA, J.)

