

17.11.2023
Item No.8
gd/ssd

MAT/1685/2023
IA NO: CAN/1/2023
DINESH KUMAR GOYAL HUF
VS
INCOME TAX OFFICER WARD-43(1)
KOLKATA AND ORS.

Ms. Sutapa Roy Choudhury,
Ms. Aratrika Roy
..for the Appellant.

Mr. Soumen Bhattacharya,
Mr. Ankan Das
..for the Respondent/Income
Tax Authority.

1. This intra court appeal is directed by the writ petitioner against the order passed by the learned Single Bench dated 24th August, 2023 in WPA 20209 of 2023.

2. The appellant had challenged the order passed under Section 148A(d) of the Act dated 4th August, 2023 for the assessment year 2017-18.

3. The learned Single Bench has dismissed the writ petition on the ground that the assessee would be entitled to raise all issues in the re-assessment proceedings. The correctness of the order is challenged in this appeal.

4. We have heard the learned advocates for either of the parties.

5. The assessing officer had sought to reopen the assessment for the assessment year 2016-17

relevant to the financial year 2015-16. The said reopening proceedings were put to challenge by the writ petitioner by filing WPA 20669 of 2022 which was allowed by order dated 28.07.2022. The said order has become final and the department had not filed any intra court appeal against the said order. With regard to the assessment year 2017-18 relevant to the financial year 2016-17, the assessee was issued a notice under Section 148A(b) dated 30.05.2022. In the notice it has been stated that credible information has been received through insight portal regarding cash deposits, interest receipts, purchase of debentures etc. The notice states that the details are annexed. The annexure to the notice is an extract of the relevant particulars which find place in the return of income filed by the assessee for the relevant assessment year. We find that there is no other allegation made against the assessee as regards the alleged escapement of income chargeable to tax. The assessee submitted his reply dated 06.06.2022. Subsequently, taking note of the order passed by the Hon'ble Supreme Court in the case of Ashish Agarwal dated 4th May, 2022, a letter was issued to the assessee dated 21.06.2023 he submits his reply to the said show cause notice, not later than 29th June, 2022. The assessee submitted their reply on 27th June, 2022 wherein they have specifically stated that there is no material placed by

the department to state that there has been escapement of income from charge of income tax. Furthermore, with regard to the cash deposits the assessee had submitted a reply stating that the deposits were made by withdrawal from their bank account. A document in support of the claim was annexed to the reply. Subsequently an order passed under Section 148A(d) of the Act dated 28th July, 2023. This was put to challenge before this court by way of the writ petition in WPA 20671 of 2022.

6. The said writ petition was allowed by order dated 28.09.2022 on the ground that there has been violation of principles of natural justice and the matter was remanded back to the assessing officer for fresh consideration. Subsequently, the additional representation was given by the assessee and the assessee was heard in the matter and the order under Section 148A(d) of the Act was passed which was impugned in the writ petition. The revenue seeks to sustain the order passed in the writ petition by contending that the order has been passed after affording an opportunity of personal hearing to the assessee, the order is a speaking order and the writ court cannot adjudicate into disputed questions of fact.

7. In support of this contention, Mr. Bhattacharyya, learned standing counsel for the department placed reliance of this court in Shri Shyam

Sundar Dhanuka v. Union of India and Others reported in APOT 187 of 2023 dated 30.08.2023 and the decision of the Hon'ble Division Bench of the High Court at Telengana in the case of Yelliah Setty v. assistant Commissioner of Income-tax reported in [2022] 143 Taxmann.com 326 (Telengana).

8. So far as the decision in the case of Shri Shyam Sundar Dhanuka is concerned, the factual matrix was entirely different and the court found that the department had to decode geometrical figures to ascertain which corresponds to refuse on the rukkus and ultimately held that these all required adjudication into disputed questions of fact and affirmed the order passed by the learned Single Bench dismissing the writ petition challenging the order passed under Section 148A(d) of the Act. The said judgment is clearly distinguishable on facts and cannot apply to the facts. The decision in the case of LARCT has pointed out the scope of the newly inserted under Section 148A of the Act and held that the order under Section 148A(d) of the Act is at a stage prior to issuance of notice under Section 148A of the Act. It has also been held that unless glaring omissions are demonstrated or conditions precedent for exercise of the power to reopen assessment are not complied with, writ court would not ordinarily interfere with the order passed under Section 148A(d) of the Act. In the instant case, on perusal of

the impugned order in the writ petition dated 4.08.2023, we find that there are glaring omissions and more particularly the condition precedent for exercise of the power of reopening the assessment are conspicuously absent. Though the order dated 4.08.2023 appears to be an elaborate order, the conclusion is only in one paragraph, namely, para 8. The assessing officer has stated that the bank statements in respect of the transactions done for the financial year 2015-16 (assessment year 2016-17) has to be mandatorily verified to examine the nature of transactions. This cannot be done by the assessing officer because the proceedings initiated by the assessing officer for reopening the assessment for the assessment year 2016-17 has been quashed. Therefore, this is a glaring omission in the order impugned in the writ petition. Apart from that, the assessing officer would state that no prudent businessman will simply withdraw crores of cash from his bank account and again will deposit it at various stage.

9. In our view, this is a personal opinion of the assessing officer. However, for the purpose of reopening an assessment there should be a tangible material placed by the assessing officer to show that there was escapement of income from the payment of income tax. This being conspicuously absent as could be seen from the annexure to the show cause notice

dated 30.05.2023, the reopening proceedings have to be held to be bad in law.

10. For the above reasons, the appeal and the writ petition are allowed and the order passed under Section 148A(d) of the Act dated 04.08.2023 and the consequential notice under Section 148 of the Act are quashed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)