22.12.2023
Item No.12
gd/ssd

MAT/2379/2023
IA NO: CAN/1/2023

ISHAN INFORMATION SERVICES
PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

Mr. Subir Sanyal,
Mr. Sutirtha Das,
Mr. Sourojit Mukherjee
..for the Appellant.

Mr. Tilak Mitra
..for the Respondent.

1. This intra court appeal by the petitioner is directed against the order dated 05.12.2023 in WPA 26641 of 2023 by which the appellant had challenged an assessment order dated 31.10.2023 under Section 147 read with Section 260 of the Income Tax Act, 1961 (The Act).

2. The writ petition was dismissed on the ground that there is an appellate remedy available to the appellant and the appellant has to exhaust the same and the time for filing appeal is still available.

3. Aggrieved by such order, the appellant has filed the present appeal.

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

5. The appellant had approached this court on an earlier occasion and filed a writ petition which was disposed of as against which the intra court appeal in MAT 1486 of 2022 which was allowed by judgment dated 21.09.2022. The relevant portion of the judgment is quoted hereinbelow:

> "8. Mr. Majumder, learned senior counsel submitted that the assessee was not communicated with the notice issued under section 148 of the Act. If that be so, we grant liberty to the appellant to make a request before the assessing officer for serving a copy of the same together with the reasons recorded.
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> 9. The learned senior standing counsel appearing for the respondents submitted that the contention of the assessee that the PAN has been cancelled is incorrect. In any event, we do not propose to go into those aspects as they all tough upon the merits of the matter. As we are satisfied that the appellant did not have adequate opportunity to put forth its submission and the reply to the show cause notice dated March 19, 2022 though received by the office of the respondents has not been considered, therefore on this short ground alone, we are inclined to remand the matter to the assessing officer for fresh consideration.
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> 10. In the result, the appeal as well as the writ petition stand disposed of and the assessment order is set aside and the matter is remanded to the assessing officer for fresh consideration. The assessing officer shall take into consideration the reply filed by the assessee to the show cause notice and all other documents as it may rely upon. The assessing officer shall provide an opportunity of personal hearing to the appellant or its authorized representative through video conferencing or physical mode and pass a fresh order on merits and in accordance with law."

6. In terms of the above direction if a request was made by the appellant for serving copies of certain records, the department was required to furnish the same. Thereafter the appellant was required to submit further reply. Therefore, it goes without saying that the appellant can submit further reply on those documents which are provided and the assessing officer was directed to provide an opportunity of personal hearing to the appellant or its authorized representative of the appellant through video conference or physical mode and order was directed to be passed in accordance with law.

7. The appellant by representation dated October 11, 2022 requested for supply of the following documents:

> "1. Notice u/s 142(1) dated 05.02.22 not served upon us as stated by you hence proof of service is needed
> 2. Notice u/s 142(1) dated 24.11.21 not served upon us as stated by you hence proof of service is needed
> 3. Copy of Approval from any of competent authority namely Principal Chief Commissioner of Income Tax / Principal Commissioner of Income Tax / Chief Commissioner of Income Tax / Commissioner of Income Tax approving re-opening of the case u/s 148 of Income Tax Act 1961 along with the reasons for passing such order and proof of service of the same when alleged notice was issued on 22.03.21 as the same was never provided to us.
> 4. Notice u/s 148 of Income Tax Act 1961 dated 22.03.2021 along with proof of service as same was never served upon us."

8. Admittedly, the documents sought for were not granted. The assessing officer issued notice under Section 142(1) of the Act dated 16.10.2023 which contained an annexure wherein the allegations against the assessee were set out. The assessee on receiving the said notice had sent several replies and one of which is dated October 24, 2023 wherein it was specifically pointed out that they have not been provided of an opportunity of personal hearing. The other aspect which was highlighted by the appellant is that the PAN number in question, namely, PAN AAACI5619Q is inactive and, therefore, the appellant cannot be called upon to file a return in an active PAN. The representation appears not to have evoked any response and ultimately the assessing officer has passed the order dated 31.10.2023. In Para 2.3 of the said order the assessing officer records that the PAN AAACI5619Q is active.

9. The learned advocate appearing for the appellant has drawn our attention to an information which has been downloaded from the income tax portal which, prima facie, shows that the status of the said PAN is inactive.

10. Therefore, it is not clear as to what prompted the assessing officer to record that the said PAN is active. Apart from that why the assessing officer while accepting that the assessee has submitted their

reply through manual mode has stated that no request was made by the assessee for physical hearing is not clear.

11. In our view, such a request was not required in the light of the direction issued in MAT 1486 of 2022 dated 21.09.2022, the operative portion of which has been quoted hereinabove.

12. Therefore, the assessing officer was required to afford an opportunity of personal hearing either through video conference or through physical mode.

13. Thus, we find that the direction by the court in the said appeal in MAT 1486 of 2022 has not been complied with.

14. This prompted us to interfere with the assessment order dated 31.10.2023 and the same is set aside and the assessing officer is directed to supply the documents sought for by the assessee in their representation dated October 11, 2022 within ten days from the date of receipt of the server copy of this order.

15. Thereafter the assessee be given 15 days' time to submit further reply and on receipt of the reply, the assessing officer shall fix a date for personal hearing and considering the factual issues involved, it would be better if the assessing officer provides personal hearing through physical mode and after considering all the documents that may be placed by

the assessee as well as the reply and the additional reply fresh orders be passed on merits and in accordance with law.

16. Accordingly, the appeal and the writ petition are allowed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)