

OD - 8

APO/2/2023
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

CHAMPA IMPEX PRIVATE LIMITED

-Versus-

UNION OF INDIA AND ORS.

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 5th April, 2023

Appearance :

Mr. Pranit Bag Adv.

Mr. Anujit Mookherji, Adv.

...for the appellant

Ms. Smita Das De, Adv.

...for the respondent.

The Court : This intra-Court appeal by the writ petitioner is directed against the order dated 28th November, 2022 in WPO/2571/2022. The appellant had filed the writ petition challenging an order passed under Section 148A(d) of the Income Tax Act, 1961 (the 'Act') and the consequential notice issued under Section 148 of the Act.

The learned Single Bench dismissed the writ petition on the ground that the order has not been passed by an

authority having lack of inherent jurisdiction nor the order falls within the category of cases where the authority concerned has committed an apparent violation of principles of natural justice. Further, the learned writ Court observed that the order impugned in the writ petition passed under Section 148A(d) of the Act is neither a final assessment nor a demand. Therefore, the assessee can raised all points during the re-assessment proceedings. We have to test the correctness of the reasons assigned by the learned Single Bench and as to what relief the appellant is entitled to.

We have heard Mr. Pranit Bag, learned counsel assisted by Mr. Anujit Mookherji, learned advocate for the appellant and Ms. Smita Das De, learned standing counsel for the respondent.

The assessment under Section 143(3) of the Act read with Section 144B of the Act was completed by an order dated 27th April, 2021. Against the said order, the assessee had preferred appeal before the Commissioner of Income Tax (Appeals) wherein they have contended that the Assessing Officer erred in making addition of Rs.10,78,18,938/- on account of purchase made by the assessee without considering the detailed documents and explanation submitted by the assessee during the assessment proceedings.

Learned Advocate appearing for the appellant submitted that the very same issue is the reason assigned for reopening the assessment by issuing a notice under Section 148A(b) of the Act. Further it is contended that the reopening of the assessment is clear case of change of opinion apart from the fact that the Assessing Officer did not conduct any independent enquiry but chose to reopen the assessment solely based upon a report received from the DDIT. Though such is the submission made by the learned Advocate for the appellant, in the objections/reply filed by the assessee dated 17th March, 2022 to the notice issued under Section 148A(b) of the Act none of these objections have been raised. Rather, the assessee has stated that the assessment order dated 22nd April, 2021 has attained finality when it is factually otherwise. One other submission which has been made by the learned Advocate for the appellant is that the addition which is now contested by the appellant before the Commissioner of Income Tax (Appeals) is the same issue for which reopening has been done and the said quantum alleged to have been high value cash deposit is embodied in the addition which is being contested by the appellant before the Commissioner of Income Tax (Appeals). This contention raised by the assessee before us has not been pointed out in the objections filed to the reopening

proceedings. The only ground which was raised by the assessee was that the information based on which reopening proceedings were initiated cannot be termed as 'new information'. In support of his contention, learned Advocate for the appellant placed reliance on the decision of the Hon'ble High Court of Gujarat in the case of *Alliance Filaments Ltd. vs. Assistant Commissioner of Income Tax* reported in (2021) 129 taxmann.com 109 (Guj.).

Learned standing counsel for the respondent referred to the reasons for opening and submitted that credible information has been received from the DDIT which was informed to the Assessing Officer after considering all aspects relating to the cash deposits and, therefore, the assessment was rightly reopened and the objection filed by the assessee was duly considered and the order has been passed and the assessee has to face the reassessment proceedings.

As pointed out earlier, the issue touching the jurisdiction of the Assessing Officer to reopen the assessment on the purported ground that appeal against the scrutiny assessment is still pending before the Commissioner of Income Tax (Appeals) is required to be considered. This is so because, this would impinge upon the jurisdiction of the Assessing Officer to invoke jurisdiction under Section 148 of

the Act. However, the Assessing Officer did not have occasion to consider this point because the assessee did not raise the issue. Nevertheless, the Assessing Officer should have been aware that an appeal has been filed against the assessment order. That apart, the contention which has been raised before us that the allegation of high value cash deposit is in fact embedded in the addition which was made by the Assessing Officer in the scrutiny assessment which is the subject-matter of appeal has also not been raised in the objection to the reopening proceedings. Further, we note the Assessing Officer, while passing the order under Section 148A(d) of the Act dated 30th March, 2022 has not considered the objections which were pointed out by the assessee. Furthermore, the Assessing Officer committed a grave error in stating that the decisions relied on by the assessee cannot be taken into consideration because they are all prior to the enactment of Section 148A of the Act. The law laid down by various decisions of the Hon'ble Supreme court as to when and how an assessment can be reopened continued to hold the filed irrespective of the fact that the section has undergone an amendment. The amendment largely is procedural and probably with an intention offer better opportunity to the assessee. Therefore, such finding of the

Assessing Officer in the order dated 30th March, 2022 is not tenable.

Considering all the above, we are of the view that the reassessment proceedings should be redone from the state of show cause notice as the jurisdiction of the Assessing Officer to reopen the assessment has to be decided and to decide the same, the assessee should raise such objection before the very same authority. Therefore, we are inclined to set aside the orders impugned in the writ petition and remand the matter back to the Assessing Officer for fresh consideration.

In the result, the appeal (APO/2/2023) is allowed and the order passed by in the writ petition is set aside. Consequently, the order dated 30th March, 2022 passed under Section 148A(d) of the Act is set aside and also the consequential notice issued under Section 148 of the Act and the matter is remanded to the Assessing Officer for fresh consideration. The assessee is directed to submit additional objection/reply to the show cause notice issued by the Assessing Officer under Section 148A(b) of the Act within a period of 15 days from the date of receipt of a server copy of this order. Thereafter, the Assessing Officer shall consider the objection and offer an opportunity to the assessee, take note of the decisions which the assessee may rely upon and

fresh orders may be passed on merits and in accordance with law.

Consequently, the connected application for stay (IA No.GA/1/2023) also stands disposed of.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.