

OD-3

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE

APOT/40/2023  
IA NO. GA/1/2023  
EMAMI LIMITED  
VS.  
UNION OF INDIA & ORS.

BEFORE :  
THE HON'BLE JUSTICE T.S. SIVAGNANAM  
And  
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA  
Date : 27<sup>th</sup> FEBRUARY, 2023

Appearance :  
Mr. J.P. Khaitan, Sr. Adv.  
Mr. Pratyush Jhunjhunwala, Adv.  
Mr. Mrigank Kejriwal, Adv.  
...for appellant  
Mr. Om Narayan Rai, Adv.  
...for respondent

The Court : - This intra-Court appeal is directed against the order dated 8<sup>th</sup> February, 2023 in WPO/186/2023. The appellant/writ petitioner had challenged the order passed by the assessing officer dated 29.7.2022 under Section 148A(d) of the Income Tax Act, 1961 (the Act). The primary ground on which the order was challenged is by contending that it is without jurisdiction. Apart from other grounds such violation of principles of natural justice, inasmuch as the documents referred to in the show-cause notice dated 26.5.2022 had not been furnished. More importantly, the assessee contended that the basis of the order impugned in the writ petition was completely different from the allegations which were made in the show-cause notice dated 26.5.2022 and, therefore, there is a serious error of jurisdiction warranting setting aside of the said order.

The learned Single Bench by the impugned order dismissed the writ petition at the admission stage holding that the order can raise all contentions during the reassessment proceedings. Aggrieved by the same the assessee is before us by way of this appeal.

Heard Mr. J.P. Khaitan, learned Senior Advocate duly assisted by Mr. Pratyush Jhunjhunwala and Mr. Kejriwal, learned Advocates and Mr. Om Narayan Rai, learned Advocate for the respondent.

It cannot be disputed that power of reopening of assessment is a power to be used cautiously and strictly in accordance with the provisions of the statute. The basic feature being that the assessee should be made known as to how they had failed to fully and truly disclose all material facts for the purpose of completing their assessment. In the instant case the reopening was sought to be done based on an information received by the DDIT (Investigation) Unit I - 3(1) Mumbai. It was alleged that through the inside portal of the assessee company it was found that they have taken fictitious loans of Rs.33,76,15,181/- in M/s. J M Financial Asset Management Limited during the year under consideration. With this allegation the assessee was called upon to show-cause notice as to why assessment for the year under consideration namely 2016-17 should not be reopened. In the annexure to the said show-cause notice in the case related information detail, the information regarding the alleged fictitious loss was mentioned and under the column "General Document" two documents were referred to. It is an admitted position that these two documents which were referred in the case related information detail under the heading "General Document" were not furnished to the assessee and this was specifically pointed out by the assessee in their reply to the show-cause notice. Apart from the reason the jurisdictional issue without prejudice to such contention the assessee also made elaborate factual submissions. The account statement for the period from 1.4.2015 to 31.3.2016 was also pointed out to the reply to the show-cause notice. The assessing officer passed the order dated 29.7.2022 under Section 148A (d) of the Act. On a cursory perusal of the said order we find that the factual aspect which have been dealt with by the assessing officer appears to be in respect of a different plan and according to the assessee the same has got no relevant to the reasons for reopening. Apart from that said finding recorded by the assessing officer also pertained to the subsequent assessment year. On going through the order

impugned in the writ petition we are satisfied that the assessing officer has proceeded entirely on a different ground than what was alleged in the show-cause notice. This would be sufficient for us to interfere with the order dated 29.7.2022. If for any reason, the assessing officer was of the opinion that there are additional reasons for reopening the assessment, nothing prevented the assessing officer from supplying such information to the assessee and affording the assessee to put forth their objections. Thus the order impugned in the writ petition is also liable to be set aside on the ground of violation of principles of natural justice inasmuch as the assessee was not put on notice on the alleged information based on which the order dated 29.7.2022 has been passed.

For the above reasons, the said order requires to be set aside. In the result, the appeal is allowed. Consequently, the writ petition stands allowed and the order passed under Section 148A(d) of the Act dated 29.7.2022 and consequential notice issued under Section 148 of the Act are quashed. Needless to state that it is always open to the respondent/department to proceed further if the law so warrants and permits.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)