OD–9

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/48/2023
GA/1/2023, GA/2/2023
ANIL KUMAR JALAN
VS.
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 24TH FEBRUARY, 2023

Appearance :
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Aditya Garodia, Adv.
...for appellant
Mr. Smarajit Roychowdhury, Adv.
..for respondent

The Court : - Heard learned Counsel for the either side.

We are satisfied with the reasons assigned in the affidavit annexed with the condone delay application condoning the delay of 35 days in filing appeal and the delay stands condoned.

This intra-Court appeal by the writ petitioner is directed against the order passed by the learned Single Bench dated 12.12.2022 by which the learned Single Bench while entertaining the writ petition declined to pass any interim orders. Considering the scope of the writ petition the learned Advocates on either side requested this Court to take up the main writ petition itself along with the appeal. Accordingly, the appeal and the writ petition are taken up together for consideration.

The challenge in the writ petition is to the order passed by the authority under Section 148A(d) of the Income Tax Act, 1961 (the Act). The principal ground on which the order has been challenged is by contending that it is in violation of principles of natural justice, inasmuch as, the appellant, who said to have substituted himself instead of the deceased, Sita Devi Jalan did not receive the notice dated 31.3.2022 issued under section 148A(b) of the Act. It is the case of the appellant that the first notice under section 148A(b) of the Act dated 8.3.2022 was received to which a e-response was sent by the appellant stating that in the annexure to the notice it is written that relevant information is attached separately, however no such attachment was received by the appellant. it appears that noting the said e-response sent by the appellant on behalf of the deceased assessee fresh notice dated 31.3.2022 is stated to have been issued but not served on the appellant. Consequently, the appellant had no opportunity to put forth the submission on behalf of the deceased assessee and the authority proceeded to conclude the matter and passed the order dated 18.4.2022 recording that the assessee has not made any submission in response to the show cause notice.

In our considered view, the right conferred under the statute namely the opportunity provided to the assessee to respond to a notice under section 148A(b) of the Act is not an empty formality as the authority proposes to reopen the assessment. therefore, adequate opportunity should be granted to the assessee, in the instant case to the appellant, who claims that he has substituted himself in the place of the deceased assessee. Therefore, we are inclined to remit the matter back to the assessing officer for fresh consideration. In the light, the appeal [APOT/48/2023] as well as the writ petition [WPO/3176/2022] are allowed and the order dated 18.4.2022 passed under section 148A(d) of the Act is set aside and the matter is remitted to the assessing officer for a fresh decision. The appellant is directed to submit his response to the show cause notice dated 31.3.2022 within a period of two weeks from the date of receipt of the server copy of this order after which the assessing officer shall afford an opportunity of hearing to the appellant/authorised representative of the appellant and proceed to finalise the matter in accordance with law. It is well open to the assessee to raise all grounds including any jurisdictional issue that may arise in the matter.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.