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APOT/74/2023
IA NO.GA/1/2023
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

AJAY KUMAR GUPTA

-Versus-

UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 21st March, 2023

Appearance :
Mr. Pratyush Jhunjhunwala, Adv.
...for the appellant.

Mr. Om Narayan Rai, Adv.
. . for the respondent..

The Court : This intra-court appeal filed by the appellant is directed against the order dated 13th March, 2023 in WPO No.187 of 2023. The said writ petition was filed challenging the order passed under Section 148A(d) of the Income Tax Act, 1961 (for brevity 'the Act') dated 12th April, 2022 for the assessment year 2018-19. The order was challenged mainly on the ground that it is in total violation of the principles of natural justice inasmuch as they relied upon documents though sought for by the assessee by their representation dated 15th March, 2022. The learned Single Bench dismissed the writ petition on the ground that the order impugned in the writ petition is not a final assessment order and the appellant/assessee can raise all points before the assessing officer.

Being aggrieved by the same, the appellant has filed this intra-Court appeal.

We have heard Mr. Pratyush Jhunjhunwala, learned counsel appearing for the appellant and Mr. Om Narayan Rai, learned counsel appearing for the respondent.

We have perused the show cause notice issued to the appellant and the first response given by the appellant dated 15th March, 2022. Though in the said response/reply the appellant ahs denied the allegation which was made against them, in order to enable them to provide appropriate and effective reply, they requested the assessing officer to provide the so-called information along with the statements of the purported brokers and material evidence along with analysis report containing the details of the transactions alleged to have been conducted by the assessee. It is not in dispute that the assessing officer received the appellant's reply dated 15th March, 2022. However, the assessing officer did not either choose to supply the information sought for nor passed any orders rejecting the request made by the assessee, on the contrary, proceeded to pass the final order dated 12th April, 2022 under Section 148A(d) of the Act. In the said order the only paragraph which deals with the assessee’s replies dated 15th March, 2022 and 31st March, 2022 is in page 2 of the order stating that the assessee did not submit any details/documents but mentioned that the information is wholly fallacious and erroneous. Unfortunately, the assessing officer failed to note that the assessee at the very first instance by their reply dated 15th March, 2022 sought for the so-called information along with the statements of the purported brokers and material evidence along with the analysis report containing the details of the transactions alleged to have been conducted by the assessee. Therefore, the assessing officer ought to have furnished the statements so that the assessee would be in a position to know as to what the allegation he has to meet. Thus, it is clear that the order impugned in the wit petition dated 12th April, 2022 has been passed in total violation of the principles of natural justice. So far as the finding of the learned Single Bench that the assessee can agitate all grounds in the assessment proceeding is concerned, we have found different view in the matter since as against the order passed under Section 148A(d) of the Act, there is a remedy provided under the Income Tax Act. Further, the reopening of an assessment more particularly when it is a scrutiny assessment, is a very serious matter and the assessee should be made known as to what is the allegation which he has to meet. Therefore, we are inclined to interfere with the order passed by the assessing officer dated 12th April, 2022 as well as the consequential notice issued under Section 148 of the Act.

In the result, the appeal [APOT/74/2023] is allowed. The order passed in the writ petition is set aside and consequentially, the order dated 12th April, 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 stands remanded to the assessing officer. The assessing officer is directed to furnish the information sought for by the assessee in their representations dated 15th March, 2022 and 31st March, 2022 within 15 days from the date of receipt of the server copy of this order. The appellant is given 15 clear days time to submit their reply after taking note of the allegations made in the documents which have been directed to be furnished after which the appellant shall be offered an opportunity of personal hearing and fresh order be passed on merits and in accordance with law.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/K.Banerjee