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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/83/2023
IA NO.GA/2/2023

LAKSHYA VINTRADE PRIVATE LIMITED
-Versus-
UNION OF INDIA & ORS.

Appearance:
Mr. Pranit Bag, Adv.
Ms. Namita Agarwal, Adv.
Mr. Debdutta Saha, Adv.
. . .for the appellant

Mrs. Smita Das De, Adv.
...for the respondent.

BEFORE:
The Hon'ble T.S. SIVAGNANAM, ACTING CHIEF JUSTICE
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th April, 2023.

The Court : This intra-court appeal is directed against the order dated 16th January, 2023 in WPO No.26 of 2023. By the said writ petition the appellant/assessee challenged the order passed by the assessing officer under Section 148A(d) of the Income Tax Act, 1961 (in brevity 'the Act') dated 7th April, 2022. The order was challenged on various grounds more particularly on the ground that it is vitiated on account of non-application of mind, non-consideration of the documents submitted by the assessee in response to the notice issued under Section 148A(b) of the Act dated 21st March, 2022. The learned Writ Court dismissed the writ petition holding that the appellant/assessee can raise all contentions in the reassessment proceedings.

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

We have heard Mr. Pranit Bag, learned counsel assisted by Ms. Namita Agarwal and Mr. Debdutta Saha, learned advocates appearing for the appellant/assessee and Mrs. Smita Das De, learned counsel appearing for the respondent.

The assessing officer by notice dated 21st March, 2022 issued under Section 148A(b) of the Act stated that he proposed to reopen the assessment for the reason that on perusal of information received from insight portal downloaded from the site it has been revealed that the assessee has made unaccounted income through transaction to the tune of Rs.46,50,000/- during the Financial Year 2017-18, which remained unexplained and prima facie requires verification. The appellant/assessee was requested to provide details of transaction in the bank statements highlighting the alleged transaction required to be verified and also file necessary evidences for the said transaction for establishing genuineness, creditworthiness of the transaction and source of fund thereof. The assessee promptly submitted their response on 28th March, 2022 giving explanation as to how the reasons of reopening are not tenable. The assessee also enclosed the bank statement and all other records which were annexed to the response by way of attachment and they have been received by the department as could be seen from the e-filing portal of the department which is placed in page 43 of the stay application. The annexures have also been enclosed in the stay application. Thus, the assessee having responded to the query raised by the assessing officer and having produced the bank statement and other records it was incumbent upon the assessing officer to deal with all those documents and come to a conclusion. However, on a reading of the order which was impugned in the writ petition dated 7th April, 2022, we find that the assessing officer has abdicated his statutory responsibility and failed to take note of the explanation offered by the assessee nor dealt with the documents which were enclosed along with the e-response. If in the opinion of the assessing officer the documents need to be explained or further ancillary documents are required, nothing prevented the assessing officer to issue notice to the assessee and call for those documents. However, in a very cryptic manner the assessing officer states that in compliance of the show cause notice some documents 'like audited documents and confirmation of transaction with the company has been filed and no bank statement has been filed'. However, it is seen that the bank statement was furnished along with the response by way of an attachment apart from furnishing the balance-sheets. Therefore, the assessing officer ought to have dealt with the documents which were furnished by the assessee and, if any clarification was required, the assessee should have been called upon to explain and the manner in which the order dated 7th April, 2022 has been passed cannot be countenanced.

For the above reasons, the appeal [APOT/83/2023] is allowed. The order passed in the writ petition is set aside. Consequently, the writ petition is allowed. The order dated 7th April, 2022 passed under Section 148A(d) of the Act and the consequential notice dated 7th April, 2022 issued under Section 148 of the Act are quashed and the matter stands remanded back to the assessing officer with the following directions:

The assessing officer is directed to examine all the documents and issue notice in cases any clarification is required or there is any inadequacy in those documents and after affording a reasonable opportunity to the assessee, redo the matter in accordance with law.

Accordingly, the connected application [GA/2/2023] stands closed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das
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