

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Original Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.O 1044 of 2023

Reserved on : 10.08.2023
Pronounced on: 24.08.2023

Bangabasi Collage

...Petitioner

-Vs-

Union of India & Ors.

...Respondents

Present:-

Mr. Subash Agwarwal
Mr. Brijesh Kumar Singh

... for the Petitioner

Mrs. Smita Das De

...for the Respondents.

Rajarshi Bharadwaj, J:

1. The instant writ application has been preferred challenging the assessment order dated 18.03.2023 issued under Section 147 read with Section 144B of the Income Tax Act 1961 pertaining to Assessment Year 2015-2016 and notice of penalty dated 18.03.2023 under Section 274 of Income Tax Act 1961 against Bangabasi College herein the writ petitioner.

2. The facts of the case are that writ petitioner is a West Bengal Government aided college, duly affiliated under the University Grants Commission and Calcutta University with nearly 5000 students under its fold. It is a public trust within the meaning of Indian Trust Act 1882, having PAN

AAAAB3437B. The petitioner is bound to furnish a return of income under Section 139(1) and is entitled to get exemption under Section 10(23C) (iiab) of the Income Tax Act 1961 (hereinafter referred to as Act).

3. The petitioner received a notice dated 21.03.2022, issued under Section 148A(b) of the Act by Assistant Commissioner of Income Tax herein respondent No. 2 stating that income of Rs 2,06,68,396/- for Assessment Year 2015-2016 had escaped assessment within the meaning of Section 147 of the Act. The petitioner was required to show cause as to why notice under Section 148 of the Act should not be issued and submit such response with relevant supporting documents in 'e-proceeding facility' on or before 28.03.2023. The petitioner proceeded to state reasons for not filing return vide acknowledgment No. 458203141280322 uploaded on 28.03.2022.

4. An order under Section 148A(d) of the Act dated 30.03.2022 was passed by respondent No. 2 that the petitioner was unable to submit any appropriate explanation under the Income Tax Act for granting immunity from submitting income tax return despite having taxable income and directed that notice under Section 148 is to be served upon it. Subsequently, notice under Section 148 was served by respondent No.2 dated 31.03.2022.

5. The case of the petitioner was selected for faceless assessment governed by the provisions of Section 144B of the Act, conducted electronically through account in e-filing website vide letter dated 17.08.2022. The petitioner received notices on 20.10.2022 and 11.01.2023 to settle pending discrepancies in the assessment proceedings. The petitioner uploaded required documents on Income Tax Portal on 17.01.2023 vide Acknowledgment Number 92473774117012 asking for physical/virtual hearing in February 2023.

6. The petitioner was served with notice dated 18.02.2023 with a direction to submit complete details to facilitate assessment proceedings on and before 24.02.2023. In response, supporting evidence and submissions were uploaded on 23.02.2023.

7. The respondents came to a finding that an amount of Rs 76,79,797/- in the year under consideration was not explained. A show cause notice dated 06.03.2023 was issued against the petitioner. Pursuant to the show cause notice, the petitioner uploaded representation on the Income Tax Portal and by a detailed objection letter dated 06.03.2023 prayed for virtual hearing through video conferencing.

8. An assessment order dated 18.03.2023 was passed whereby the amount of Rs.76,79,797/- was treated as cash credit under Section 68 of the Act and consequently added in its total income. The petitioner was instructed to show cause as to why penalty proceedings under Section 271(1) (c) of the Act should not be initiated in case of concealment of income.

9. On the basis of computation sheet prepared, an amount of Rs.65,62,159/- was demanded vide notice of demand under Section 156 of the Act. Further, a notice for penalty under Section 274 read with Section 271(1)(c) and Section 271F of the Act was imposed upon the petitioner for alleged concealment of particulars of income in the assessment order and failure to furnish return of income before the end of assessment respectively. Thus, being aggrieved by the preceding orders of the respondent authority, the present writ application lies.

10. Learned Counsel for the writ petitioner submits that the assessment order passed by the respondent authorities is in glaring violation of principles of natural justice. Though the petitioner supplied all necessary documents and evidence of proof such as filed month wise cash book, summary of cash deposited in various accounts, statement of Cash generated from fees, annual

fees, exam fee, by way of collection from students, letter in respect of Govt. Aid to college, various ledgers in respect of fees and fines collected from students in various heads i.e. Admission, tuition, exam, lab, transfer certificate, enrolment, self-inspection fees etc, assessment was made without giving any opportunity of hearing. The petitioner made repeated representations on 28.03.2022, 17.01.2023, 23.02.2023 and 10.03.2023 separately as well as through Income Tax Portal for personal hearing through video conferencing which were not taken into consideration by the respondent authority. Though the date for video conferencing was fixed, the column for video conferencing time and link was left blank by respondent authorities.

11. Learned counsel further submits that mere non-filing of return of income is not a valid ground for denial of relief available to the petitioner under Section 10(23C) of the Act. By raising an astronomically high demand of Rs.65,62,159/- in the assessment order, the respondent authority has acted in contravention of Section 144B of the Act and SoP under Faceless Assessment provisions. Assessment Order not complying with procedure under Section 144B of the Act ought to be invalid.

12. The Learned Counsel for the respondent No. 2 affirms that the case of the petitioner was rightfully re-opened by issuance of notice under Section 148 of the Act. Through the information in Non-filers Monitoring System (NMS Portal) it has come to light that the writ petitioner made high value cash deposits of Rs.2,06,68,396/- in various saving bank accounts. Issuance of show-cause notices were proper to explain the recurring variation between total cash deposits in bank accounts and available cash generated through student fees. As per rules of procedure, a request for personal hearing could only be made by clicking the Seek Video Conferencing button available against the SCN, in the view notices of this proceeding in the e-proceedings tab on e-filing portal and before expiry of compliance date and time through video conference. The video conferencing sought by the petitioner after issuing

notice on 06.03.2023 was fixed on 11.03.2023. The petitioner instead filled the materials for seeking video conferencing on 10.03.2023 and the video conferencing date and time were left blank.

13. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the assessment order dated 18.03.2023 is prejudicial to the interest of the writ petitioner. The opportunity of personal hearing could not be availed due to technical difficulties and for such technical fault, the petitioner cannot be made to suffer. No incontestable evidence is provided by the respondent authority to show that the request of the petitioner for providing opportunity of personal hearing by video conferencing was complied with or that the request of the petitioner was considered after pointing out such technical fault in the system.

14. Administrative instructions for guidance of Income-tax Officers on matters pertaining to assessment vide Circular No. 14(XL-35) dated 11.04.1995 set out the following: -

“... (3) Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should-(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;(b)freely advise them when approached by them as to their rights

and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.”

The petitioner is a West Bengal Government aided college duly affiliated under the Calcutta University, enjoying relief under Section 10 (23C) of the Act but not conversant with the Income Tax ‘e-proceeding facilities’. The situation being such, the respondent authority has to consider the plight of the petitioner in the light of departmental circular No. 14(XL-35) dated 11.04.1995.

15. The impugned assessment order dated 18.03.2023 and notice of penalty dated 18.03.2023 is set aside. The matter is remanded to the concerned assessing officer to pass a fresh assessment order in accordance with law after giving an opportunity of hearing to the petitioner through video conferencing by providing a proper link. Writ application being WPO 1044 of 2023 is allowed. There shall be no order as to costs.

16. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(RAJARSHI BHARADWAJ, J)

Kolkata

24.08.2023

PA (BS)