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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/143/2023
IA No:GA/1/2023
SHRI HARISH KUMAR SINGHANIA
VS.
UNION OF INDIA & ORS.

APOT/144/2023
IA No:GA/1/2023
SHRI BISHWANATH SEKSASRIA
VS.
UNION OF INDIA & ORS.

APOT/145/2023
IA No:GA/1/2023
SHRI BISHWANATH SEKSASRIA
VS.
UNION OF INDIA & ORS.

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 7th June, 2023

Appearance :
Mr. Saurabh Bagaria, Adv.
Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
Mr. G.S. Gupta, Adv.
... for appellant

Mr. Soumen Bhattacharjee, Adv.
... for respondents

The Court : This intra-court appeal by the writ petitioner is directed against the order dated 27th April, 2023 in WPO No.867 of 2023. In the said writ petition the appellant had challenged the order passed by the respondent dated 31st March, 2023 under Section 148A(d) of the Income Tax Act, 1961 (the Act) for the assessment year 2019-20 on the sole ground of violation of principles of natural justice since the petitioner did not have access to the materials based on which the show-cause notice under Section 148A(b) of the Act was issued. The Learned Single Judge after taking note of the submissions on either side has recorded that the materials based on which the re-opening was proposed finds place in the order passed under Section 148A(d) (impugned order in the writ petition) and has also held that the same should have been disclosed to the appellant prior to the passing such an order.

In the light of the said finding the Learned Writ Court directed the order dated 31st March, 2023 passed under Section 148A(d) of the Act to be treated as a notice and the appellant was granted liberty to file additional response within a period of 10 days from the date of the order passed in the writ petition.

The appellant being aggrieved by the said order had filed the appeal before this Court on 8th May, 2023, well before the expiry of the 10 day period stipulated by the Learned Writ Court. However, due to intervening summer vacation the appeal was not listed and it has been listed today for hearing before this Division Bench.

The learned senior standing counsel for the respondents would vehemently contend that inspite of liberty being granted to file an additional response, the appellant did not comply with the direction and merely stated that appeal has been filed against the order in the writ petition. The Assessing

Officer, on taking into consideration of the information which was already on record, has passed fresh orders under Section 148A(b) of the Act on 18th May, 2023 or on any other date. Though this order did not form part of the appeal papers, it has been placed before us by the revenue which is taken on record and the correctness of the said order dated 18th May, 2023 is also examined in this appeal.

The learned standing counsel for the respondent revenue places reliance on the decision of the Division Bench of the High Court of Punjab & Haryana in *Krishana Goel vs. Principal Chief Commissioner of Income-tax, (2022) 140 taxmann.com 136 (Punjab & Haryana)* to contend that the Writ Court ought not to interfere at an interim intermediate stage in exercise of its power under Article 226 of the Constitution. In the said decision in paragraph 10, the Hon'ble Division Bench has pointed out that it is well settled that there is vexed distinction between jurisdictional error and error of law/fact within jurisdiction and for rectification of the errors statutory remedy has been provided. In the instant case the appellant's contention is that there has been violation of principles of natural justice which would encompass a jurisdictional remedy. Therefore, the Court is required to see whether there was violation of principles of natural justice.

We need not labour much to come to a conclusion as the Learned Writ Court itself has rendered a finding that the information ought to have been disclosed to the appellant along with the show-cause notice issued under Section 148A(b) of the Act. Therefore, when there is violation of the principles of natural justice, there is no bar for entertaining a challenge to the order passed under Section 148A(d) of the Act under Article 226 of the Constitution.

We are conscious of the fact that in a writ proceedings the merits of the correctness of the order passed by the Assessing Officer under Section 148A(d) cannot be questioned or in other orders, it is the decision making process which can be the subject matter of judicial review, not the decision itself.

The learned standing counsel for the revenue would vehemently contend that the case on hand is a clear case of fraud and substantial revenue is involved in the matter and statements have been recorded which will clearly show that a unique deceptive method of making the amount of transaction has been adopted and fraud has been played.

In our view, this issue cannot be adjudicated in the present proceedings as we are not dealing with the merits of the matter and as already pointed out, the same cannot be adjudicated in a writ petition and if there is a challenge to the order on merits, it goes without saying that the assessee should avail statutory remedies available under the Income Tax Act. Since the Learned Writ Court was satisfied that there has been violation of the principles of natural justice to which finding we also concur, we are of the view that the appellant should be afforded an opportunity to put forth their additional response to the allegations which have been set out in the order passed under Section 148A(d) of the Act dated 31st March, 2023.

Learned counsel appearing for the appellant/assessee pointed out that in the said order certain information has been mentioned in a tabulated format in page 5 of the said order and the appellant has not been furnished with the copies of those statements. We find from page 5 of the order dated 31st March, 2023, a working table with respect to cash loan transaction of the assessee has been shown and the name of the assessee figures in the said tabulated statement. However, there are certain statements/seized materials of other persons which have been recorded, which have been marked with the abbreviation `AKK'. Admittedly, the appellant has not been furnished with the said statements which appeared to be the basis for reopening of the proceeding.

In the light of the above, we issue the following direction stipulating strict timelines.

In the result, these appeals stand disposed of by directing the Assessing Officer to give permission to the authorised representative of the assessee to peruse the annexures which have been marked with the abbreviation `AKK' and take notes and such opportunity be given within a period of one week from the receipt of the server copy of this order. After perusal of those documents/seized materials/bills/memos etc. the assessee is directed to submit their additional response within 10 days from the date on which the perusal is completed. Thereafter the Assessing Officer shall consider the additional response and the materials that the assessee may place before him along with the response and pass fresh orders under Section 148A(d) of the Act on merits and in accordance with law.

In the light of the above direction, the orders which have been passed by the Assessing Officer under Section 148A(d) of the Act, dated 18th May, 2023 stand set aside.

Needless to state that the assessee should be given an opportunity to peruse the documents relatable and referable to the assessee alone.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)