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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/188/2023
IA NO: GA/1/2023
SHRI SHYAM SUNDAR DHANUKA
-Versus-
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 27th September, 2023

Appearance :
Mr. Abhratosh Majumder, Sr. Adv.
Mr. Sourav Bagaria, Adv.
Mr. Kyoushio Roy, Adv.
Mr. A.N. Bhattacharyya, Adv.
..for the appellant

Mr. Amit Sharma, Adv.
... for the respondents

The Court : This intra-court appeal by the writ petitioner is directed against the order dated 5th June, 2023 in WPO No. 930 of 2023. In the said writ petition the appellant had challenged an order passed under Section 148A(d) of the Income Tax Act, 1961 (the Act) dated 30th March, 2023, for the assessment year 2019-20. The said order was questioned on the ground of lack of jurisdiction, violation of principles of natural justice, failure to seek approval under Section 151 of the Act on one of the issues on which the assessment was sought to be reopened. However, the Learned Single Bench by the impugned order had dismissed the writ petition stating that the appellant can raise all points before the Assessing Officer in the course of the proceedings subsequent to the notice under Section 148 of the Act.

After elaborately hearing the learned senior Advocate for the appellant and the learned standing Counsel for the respondent Department, we are of the view that since jurisdictional issue has been raised by the appellant in the writ petition, an affidavit should have been called for from the respondent to adjudicate the jurisdictional issue. The legal issue canvassed in this appeal as well as in the writ petition is whether the Assessing Officer is empowered to issue multiple notice under Section 148A(b) of the Act based on the same reasons when admittedly the assessee has submitted the reply to all the three notices. Further, it is contended that when the second notice dated 10th March, 2023 was issued, the verification status, as could be seen from the website portal, shows the matter to be "under verification". This aspect was pointed out by the assessee in the reply dated 16th March, 2023 contending that after due verification an opportunity of being heard may be given to the tax payer before initiating proceedings for reopening. Thereafter, the third notice under Section 148A(b) of the Act dated 13th March, 2023 was issued. However, prima facie we find there is no reference to any of the replies submitted by the appellant to the first two notices under Section 148A(b) of the Act. In the third notice dated 13th March, 2023, an additional ground has been raised with regard to the alleged cash loan of Rs.62,10,00,000/-. It is the submission made on behalf of the appellant that in the annexure to the said notice a working table has been given from which the total amount is Rs.1,50,00,000/-. Apart from this, it is pointed out that the assessee has subsequently come to know that in the order of approval which was passed by the Learned Commissioner under Section 151 of the Act, no approval appears to have been obtained with regard to the second issue namely, with regard to the alleged cash loan of more than Rs.62 Crore.

These issues, in our opinion, are jurisdictional issues which need to be gone into in the writ petition for which affidavit has to be filed by the respondent Department. Therefore, the writ petition should be restored to the file of the Learned Single Bench, to be heard and decided on merits after affidavit is filed by the respondent Department.

Accordingly, the appeal is allowed.

The writ petition is restored to the file of the Learned Single Bench.

The respondent no.1 is directed to file their affidavit-in-opposition within four weeks from date. Reply, if any, be filed within three weeks thereafter. The writ petition be listed before the appropriate Single Bench after a period of eight weeks.

Till the writ petition is heard and disposed of, the order impugned in the writ petition dated 30th March, 2023, passed under Section 148A(d) of the

Act, and the consequential notice issued under Section 148 of the Act shall remain stayed.

The stay application IA No:GA/1/2023 is also disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)