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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/79/2023
IA NO: GA/1/2023
NITIN AGARWAL
VS
INCOME TAX OFFICER, WARD-46(1), KOLKATA AND ORS

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13TH OCTOBER, 2023

Appearance :
Ms. Sutapa Roy Chowdhury, Adv.
Ms. Aratrika Roy, Adv.
...for petitioner
Mr. Prithu Dudheria, Adv.
...for respondent

The Court : - This intra-court appeal filed by the writ petitioner is directed against the order dated 8.6.2023 in WPO/1096/2023. In the said writ petition, the appellant had challenged the order passed by the assessing officer dated 13.4.2023 under Section 148A(d) of the Income Tax Act, 1961 (the Act) relating to the assessment year 2019-20. The principal ground on which the order was challenged is by contending that it has been passed by violation of principles of natural justice inasmuch as the appellant has not been granted an opportunity of personal hearing.

On perusal of the order dated 13.4.2023 passed under Section 148A(d) of the Act, it is seen that the assessing officer has stated that an opportunity of being heard as per Section 148A(b) of the Act was provided to the assessee along with a copy of information and material relied upon by notice dated 27.3.23. This notice called upon the assessee to furnish a reply along with supportive documents on the allegation set out in the annexure to the notice and we find that the notice is not a notice of personal hearing. The assessee responded to the said notice and submitted their reply dated 31.3.23, apart from denying the allegation made against them. They requested to furnish those documents, information, enquiry and/or credential information which has been relied on by the department and reserved their right to make further objection as soon as the documents are supplied to them. Thereafter, another notice was issued under Section 148A(b) of the Act enclosing certain information. It is pointed out by the learned Advocate for the appellant that in the information only in one place the name of the assessee figures stating as per the GST data the parties have taken accommodation entry from the assessee. The assessee responded to the said notice by submitting a reply on 12.4.23 contending that as per the record of the department M/s. Agnibhoo Sales Pvt. Ltd. failed to reply to the summons issued on 7.2.23 and this Court can never imply that they have denied or disputed the purchases effected by the assessee. Assessee further stated that in the absence of any such denial, the purchases made are admitted facts and the assessee has already provided party ledger, account confirmation bill signed by Agnibhoo Sales Pvt. Ltd. and purchase register. Therefore, it is contended that by speculation it cannot be said that the purchases made by the assessee are bogus or fake. Further the assessee stated that the document provided by the department are neither relevant nor does it indicate any bogus purchases made by them and in the document there is no whisper about the assessee that any income has escaped assessment.

Once again, the assessee sought for the relevant documents and liberty to file an additional objection. The reply given by the assessee on 12.4.23 has not been taken into account in the manner it should have been done, though the assessing officer refers to the said reply in pages 3 and 4 of the order dated 13.4.23. As pointed out earlier, the notice dated 27.3.23 is not a notice of personal hearing. Therefore, the authority while passing the order impugned in the writ petition has violated the principles of natural justice and inasmuch as the statute also provided that opportunity be granted to the assessee before an assessment is reopened. Therefore, we are satisfied that there has been violation of principles of natural justice and, therefore, the assessee has to be provided an opportunity of personal hearing and also be given liberty to furnish additional documents to support their stand. For the above reasons, the order impugned in the writ petition dated 13.4.23 passed under section 148A(d) of the Act is directed to be treated as a notice under Section 148A(b) of the Act and assessee be directed to file further objection along with supportive documents and on receipt of the further objection and supportive documents, the assessing officer is directed to fix a date for personal hearing to hear the authorized representative of the assessee and pass fresh orders on merits and in accordance with law. The assessee is directed to file their reply within a period of 30 (thirty) days from the date of receipt of the server copy of this order.

During the course of personal hearing, the petitioner may make a request for supply of any additional document that may be relied upon by the department.

The appeal is allowed with the above observations.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.