OD-9

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/207/2023
IA NO: GA/1/2023
NAVYA METALS PVT. LTD.
VS
THE INCOME TAX OFFICER, WARD 1/1 & ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 23rd August, 2023

<u>Appearance</u> :
Mr. Saurabh Bagaria, Adv.
Mr. Rites Goel, Adv.
...for appellant

Mr. Tilak Mitra, Adv.
...for respondent

The Court : - This intra-Court appeal by the writ petitioner is directed against the order passed by the learned Single Bench dated 15.05.2023 in WPO/953/2023.

The appellant challenged an order of assessment passed by the Assessing Officer dated March 24, 2023 under Section 147, read with Section 144B of the Income Tax Act, 1961, (the Act) primarily on the ground that it is in violation of the principles of natural justice. The learned Single Bench opined that the order is a detailed order and has given certain reasons and the order is not contrary to any specific provision of law or without jurisdiction. Accordingly, the writ petition was dismissed giving liberty to the appellant to avail an alternative remedy by filing an appeal before the appropriate authority.

Aggrieved by the same, the appellant has filed the present appeal.

We have heard Mr. Saurabh Bagaria, assisted by Mr. Rites Goel, learned Advocate for appellant and Mr. Tilak Mitra, learned standing Counsel for respondent/revenue.

The assessment for the year under consideration, A.Y. 2018-19 was completed and the Assessing Officer proposed to reopen the assessment and issued notice under Section 148A(b) of the Act, dated March 21, 2022. In the annexure to the said notice, it was alleged that the assessee company is engaged in dubious financial transactions through which they have brought back unaccounted money to the tune of Rs.1,61,30,988/- through different shell companies and finally introduced such an amount as receipts/payment from Mahendra Traders. The assessee was called upon to explain as to why notice under Section 148 should not be issued to reopen the assessment. The assessee, however, did not file any reply and the Assessing Officer proceeded to pass an order under Section 148A(d) of the Act, dated April 8, 2022. Thereafter, the Assessing Officer issued a show-cause notice dated February 20, 2023, almost a year after the order was passed under

Section 148A(d) of the Act proposing certain variations. The assessee submitted their reply dated March 20, 2023. In the said reply the assessee pointed out that in so far as the transaction alleged to have been made with Mahendra Traders, the assessment of the said entity was sought to be reopened by issuance of notice under Section 148A of the Act and the said assessee namely, Mahendra Taders, had submitted their reply and the Assessing Officer of the said assessee by order dated April 8, 2022 dropped the proceedings holding that it is not a fit case for initiating action under Section 148A of the Act. The assessee specifically referred to the same in their reply. However, the Assessing Officer has completed the assessment by order dated March 24, 2023, which was impugned in the writ petition. It is no doubt true that the assessment order, which was impugned in the writ petition, is a 26-page order. However, on a closure scrutiny, we find that the Assessing Officer has not specifically dealt with the reply given by the assessee in so far as the alleged transaction with Mahendra Traders.

However, one other issue has also been taken note of by the Assessing Officer namely, with regard to an alleged transaction with M/s. Siddhi Viyanak Metals and Salt Company Private Limited. It is to be noted that in the notice issued under Section 148A(b) of the Act, dated March 21, 2022, there was no such allegation with regard to any alleged bogus purchase from M/s. Siddhi Viyanak Metals and Salt Company

Private Limited**.** However, the Assessing Officer has also dealt with the said issue in the assessment order dated March 24, 2023.

One more aspect which has been decided against the assessee is with regard to current loss of Rs.3,85,50,243/- which was not allowed to be carried forward in the subsequent year to set off against the income. Admittedly, this issue was never part of a show-cause notice which was issued under Section 148(b) of the Act. This Court had occasion to examine as to how the statutory provision namely, Section 144B of the Act, operates in the case of *Magadh Sugar & Energy Ltd. vs. Assessment Unit, Income-tax Department, National Faceless Assessment Centre, (2023) 146 taxmann.com 135 (Calcutta).* After taking note of Section 144B(1)(xii), it was held as follows :-

"8. In terms of the above provision, the assessment unit shall, after taking into account all the relevant material available on record, has two options, namely, (a) to prepare in writing an income or loss determination proposal, where no variation prejudicial to the assessee is proposed and send a copy of such income or loss determination proposal to the National Faceless Assessment Centre (for short, "NFAC"). The second alternative is as mentioned in clause (b) is to issue a show cause notice stating variations prejudicial to the interest of the assessee proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice on the assessee through NFAC. Admittedly, clause (b) of section 144B(1)(xii) has not been followed in the case on hand.

9. In Sardar Co-op. Credit Society Ltd. v. Addl./Jt./Dy./Asstt. CIT (2022) 139 taxmann.com 414/444 ITR 23(Guj.), it was held that the obligation is on the assessing officer to serve a show cause notice calling upon him to show cause as to why the proposed variation should not be made failing which the assessment would be non-est. Similar view was taken in the case of *Gandhi Realty (India) (P.) Ltd. v. Asstt./Jt./Dy./Asstt. CIT/ITO (2021) 133 taxmann.com 83/(2022) 441 ITR 316 (Guj.)*. The decision in the case *Novelty Merchants (P.) Ltd. v. National Faceless Assessment Centre* (2021) 131 taxmann.com 289/283 Taxman 385 (Delhi) is also to the same effect wherein it was held that where no prior show cause notice as well as draft assessment order have been issued before passing final assessment order there was violation of principles of natural justice as well as mandatory procedure prescribed under the Faceless Assessment Scheme and therefore, the matter was remanded to the assessing officer. The decision in *Novelty Merchants (P.) Ltd.* (supra) was prior to the amendment and after the amendment, the provision mandates that a show cause notice stating variations prejudicial to the interest of the assessee, has to be served."

The above decision will come to the aid and assistance of the appellant/assessee inasmuch as the Assessing Officer has proceeded on issues which were never put on notice to the assessee at the first instance when the show-cause notice was issued under Section 148A(b) of the Act. That apart, with regard to the current loss, which was not allowed to be carried forward, was never an issue in the show-cause notice. Furthermore, the Assessing Officer has not specifically dealt with the stand taken by the assessee that in respect of Mahendra Traders there was a proposal to reopen the assessment. However, the said proceedings was dropped by the Assessing Officer of the said entity by order dated April 8, 2022.

Thus, we are of the view that the Assessing Officer should provide adequate opportunity to the assessee by issuing a comprehensive show-cause notice containing all allegations and furnishing documents in support of such allegations so that the assessee has an effective opportunity to put forth their submissions. It is only thereafter the Assessing Officer can take a decision as to whether the assessment has to be reopened or not.

For all the above reasons, the assessment order dated March 24, 2023 is liable to be set aside on the ground of violation of principles of natural justice.

We make it clear that we have not examined the merits of the matter and the assessment order has been set aside on the aforementioned technical ground.

In the result, the appeal is allowed and consequently, the writ petition is allowed.

The assessment order dated March, 24, 2023 is set aside and the matter is remanded to the Assessing Officer for fresh consideration. The Assessing Officer is directed to issue a comprehensive show-cause notice to the appellant/assessee affording them sufficient opportunity to file their reply/objection along with supportive documents, if any, after which the Assessing Officer shall consider the reply and the documents and take a fresh decision on merits and in accordance with law.

The stay petition being GA/1/2023 is closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

PKD/GH/SN
AR(CR)