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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/90/2023
IA NO.GA/1/2023

ARISSAN ENERGY LIMITED
-Versus-
UNION OF INDIA & ORS.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th August, 2023

Appearance :
Mr.Subash Agarwal, Adv.
..for the appellant.

Mr.Vipul Kundalia, Adv.
Mr.Anurag Roy, Adv.
...for the respondent.

The Court : This intra-court appeal by the writ petitioner/appellant is directed against an order dated 8th June, 2023 in WPO No.1119 of 2023. The appellant had filed the said wit petition challenging an order passed by the respondent under Section 148A(d) of the Income Tax Act, 1961 dated 13th April, 2023 for the assessment year 2019-20. The learned Single Bench had dismissed the writ petition on the ground that the petitioner has ample opportunity of raising all contentions in the reopening proceedings pursuant to the notice issued under Section 148 of the Act dated 13th April, 2023.

Aggrieved by such order, the appellant has filed this appeal.

We have heard Mr. Subash Agarwal, learned counsel appearing for the appellant and Mr. Vipul Kundalia, learned standing counsel assisted by Mr. Anurag Roy, learned advocate appearing for the respondent/revenue.

The respondent/assessing officer issued notice under Section 148A(b) of the Act dated 11th March, 2023. In the annexure appended to the said notice it had been mentioned that a credible information was received from reliable source against BSR Finance & Construction Limited. There are two accounts highlighted, namely, 409000306048 and 134492 with RBL Bank Limited, wherein the reporting authority has pointed out the alert in the bank accounts in the name of the entity. The assessing officer states that glancing over the pattern of transactions carried out through the bank account 409000306048, it is found that the nature of transactions, prima facie, denotes layering and routing of funds to be finally credited to the main beneficiary for which the whole process of circulatory movement is created and effected through the transactions. Further, it is stated that BSR Finance & Construction Limited is merely a paper/shell entity used as a conduit for layering of funds. It is further alleged that from the "above information" that the assessee has entered into a financial transaction of the value of Rs.1,15,00,000/- during the financial year 2018-19, relevant to the assessment year 2019-20, which suggests that income chargeable to tax has escaped assessment in respect of the financial transaction made by the assessee/appellant. The appellant was directed to show cause as to why notice under Section 148 of the Act should not be issued on the basis of evidence based information which suggests that income chargeable to tax has escaped assessment in the hands of the assessee. The assessee submitted their reply on 17.03.2023 stating that they have not entered into any financial transaction with BSR Finance & Construction Limited during the financial year 2018-19 relevant to the assessment year 2019-20 that is, neither the assessee received any amount from or paid any amount to BSR Finance & Construction Ltd. during the relevant financial year and there was no financial transactions in between the assessee and BSR Finance & Construction Ltd. during the financial year 2018-19 and therefore, there is no question of income chargeable to tax escaping assessment in respect of the financial transaction with the said company. Therefore, the assessee requested that action should not be initiated under Section 148 of the Act based on incorrect information.

After considering the said reply, the assessing officer has passed an order dated 13.04.2023 under Section 148A(d) of the Act. The discussion/conclusion is in paragraph 5 of the order. After extracting certain portions from the show cause notice, in paragraph 5.1 of the said order the assessing officer states that the assessee did not submit any document through evidence, bank statements, profit and loss account and balance sheet as supporting documents to substantiate the alleged transaction made not only with BSR Finance & Construction Ltd. but also with any other concern during the financial year 2018-19, relevant to the assessment year 2019-20. Therefore, the assessing officer concluded that in the absence of any concrete evidence the alleged transaction at Rs.1,15,00,000/-has escaped assessment and there is failure on the part of the assessee to disclose true and correct facts of income chargeable to tax. Accordingly, the assessing officer held that it is a fit case to issue notice under Section 148 of the Act.

The said order was put to challenge in the writ petition. Apart from other grounds, the assessee mainly contended that assessing officer has failed to consider that there is no material on record indicating escape of income inasmuch as no such material has been handed over to the assessee to the assessee nor annexed to the notice issued or in the order which has been passed by the assessing officer. On a careful perusal of the annexures to the notice dated 11.03.2023 it is seen that the credible information which is stated to have been received by the department from reliable source is against BSR Finance & Construction Ltd. The other observations also concern BSR Finance & Construction Ltd., which, in the opinion of the assessing officer, is a paper/shell company. In the third paragraph of the annexures to the show cause notice dated 11.3.2023, the Assessing Officer states that it is seen from the "above information" that the assessee has entered into financial transaction of the value of Rs.1,15,00,000/- during the financial year 2018-19, which suggests that income chargeable to tax has escaped assessment. Thus, the basis for issuing the notice under Section 148A(d) of the Act is the information which has been received by the department from reliable source. Thus, the assessee was entitled to know the basis on which such allegation has been made or in other words, the assessee is entitled to be furnished with the relevant information based on which the Assessing Officer has come to the prima facie conclusion that income chargeable to tax has escaped assessment. Admittedly, this has not been done by the Assessing Officer. That apart, the assessee has in its reply dated 17.03.2023 to the show cause notice has stated that they have not entered into any financial transaction with BSR Finance & Construction Ltd. during the financial year 2018-19. Therefore, if there was material available in the hands of the Assessing Officer to link the assessee with the said company, which in the view of the Assessing Officer was a shell company, such material ought to have been furnished to the assessee. This aspect touches upon the jurisdiction of the authority to invoke its power of reopening the assessment. At this juncture, it would be relevant to take note of a decision rendered by this Court in the case of Excel Commodity & Derivative Pvt. Ltd. Vs. Union of India and Ors. in APOT/132/2022 dated 29.08.2022. In the said decision, Court took into consideration the Circular issued by the Central Board of Direct Taxes (CBDT) dated 22nd August, 2022 giving instruction to the department officers with regard to uploading of data on functionality/portal of the income tax department. In the said Circular, CBDT has stated that in several cases information made available/data uploaded by the reporting entities are not fully accurate due to error of human nature, technical nature etc., and therefore, the department was advised to effect due verification and opportunity of being heard given to the taxpayers before initiating proceedings under Section 148/147 of the Act. Admittedly, in the instant case, the procedure under Section 148A(d) of the Act has not been resorted to by the assessing officer as he was of the opinion that no such enquiry under Section 148A(a) was required.

Be that as it may, if credible information was available in the hands of the Assessing Officer, which prima facie shows that the assessee had financial transaction with the said BSR Finance & Construction Ltd. during this relevant financial year, such information ought to be made to the assessee for effectively submitting their objections/reply. More or less an identical issue was dealt with by the High Court of Judicature at Bombay in the case of Anurag Gupta Vs. Income Tax Officer, Ward (1), Kalyan (West) & Ors. in WP No. 10184 of 2022 dated 13.3.2023. In the said case the assessee did not file any response to the notice issued by the Assessing Officer under Section 148A(b) of the Act. Nevertheless, the Court took into consideration the facts of the case, referred to the decision of the Hon'ble Supreme Court in Union of India Vs. Ashis Agarwal, 2022, 138 taxmann 64(SC) and held that in absence of any material being supplied to the assessee, the assessee was handicapped in submitting an effective reply to the show cause notice, thereby rendering the purports and spirit of Section 148A(b) of the Act totally elusive and ephamerical.

Learned Senior Advocate for the respondent/revenue placed reliance on the order passed by the Hon'ble Supreme Court in the case of Ansul Jain Vs. Principal Commissioner of Income Tax & Anr. in Special Leave to Appeal (C) 14823/2022, dated 2.9.2022. In the said case the Special Leave Petition filed by the assessee therein was dismissed. On going through the order passed by the Hon'ble Supreme Court, we find that the Hon'ble Supreme Court had pointed out that assessee in the said case has a grievance on merits and therefore, held that the same has to be agitated before the Assessing Officer in the reassessment proceedings. The facts of the case on hand is entirely different as the assessee questions the jurisdiction of the Assessing Officer in assuming jurisdiction to reopen the assessment and a specific plea has been raised that no information was furnished to the assessee based on which reopening was proposed and in the absence of information being furnished to the assessee nor any material being explicitly made known to the assessee while issuing the show cause notice, it is undoubtedly a case where there has been a violation of principles of natural justice and the Court exercising jurisdiction under Section 226 of the Constitution is entitled to interfere with such order on such a technical ground without examining the merits of the matter.

It is to be pointed out that in the instant case the assessee has not canvassed the merits of the matter but has expressed willingness to go before the Assessing Officer upon being furnished requisite information so that the assessee could be in a position to submit an effective reply.

For the above reasons, the appeal is allowed.

The order passed in the writ petition is set aside. Consequently, the writ petition is allowed and the order passed under Sec. 148A(d) of the Act dated 13.04.2023 and the consequential notice issued under Section 148 dated 13.04.2023 is set aside the matter is remanded back to the Assessing Officer with a direction to the Assessing Officer to furnish the relevant information based on which he has come to the prima facie conclusion that the assessee has entered into financial transaction of the value of Rs. 1,15,00,000/- during the financial year 2018-19, relevant to the assessment year 2019-20. The assessee shall be granted reasonable time to submit their reply on receipt of such information and thereafter the

Assessing Officer shall take a fresh decision on merits and in accordance with law.

In the event the Assessing Officer is of the view that the material or information cannot be furnished in its entirety to the assessee as it may contain details of other transactions which do not concern the assessee, the Assessing Officer is free to allow the authorised representative of the assessee to inspect those documents in the presence of the Assessing Officer in the office of the Assessing Officer.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

SN/GH.