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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

APOT/220/2023
IA NO.GA/1/2023
SURESH KUMAR GUPTA

-Versus-

THE INCOME TAX OFFICER, WARD 40/1 AND ORS.

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

Appearance :
Mr. Kapil Goel, Adv.
Mr.Rites Goel, Adv.
Mr.Sandeep Goel, Adv.
..for the appellant.

Mr. Vipul Kundalia, Adv.
Mr.Soumen Bhattacharjee, Adv.
..for the respondent.

The Court : This intra-court appeal by the appellant is directed against the order dated 15th March, 2023 in WPO No.933 of 2023. The said writ petition was filed challenging an order under Section 148A(d) of the Income Tax Act, 1961 dated 8th April, 2023 for the assessment year 2016-17. Primarily, the assessee challenges the said order being jurisdictionally flawed and it is not valid show cause notice as it is totally vague and without furnishing any relied upon material and totally contrary to the mandate of Section

149(1)(b) of the Act of 1961. The learned Single Bench had disposed of the writ petition by setting aside the order dated 8th April, 2023 and remanded the matter to the assessing officer for fresh consideration. Not being satisfied with such order, the assessee is on appeal before us.

We have heard Mr. Kapil Goel, learned counsel assisted by Mr. Rites Goel, learned advocate for the appellant and Mr. Vipul Kundalia, learned counsel assisted by Mr. Soumen Bhattacharjee, learned advocate for the respondent.

As could be seen from the reply given by the assessee dated 29th March, 2023 to the show cause notice issued under Section 148A(b) of the Act dated 20th March, 2023, the assessing officer has proceeded to deal with the merits of the matter and has also referred to various decisions of various courts as well as the tribunals. In the said reply amongst other things the assessee had stated that the proceedings initiated on the basis of search operation sought to have been initiated under Section 153C of the Act and Section 148A could not be resorted to. The assessing officer has considered the reply and passed the order under Section 148A(d) dated 8th April, 2023. The learned Single Bench after taking into consideration the grounds raised by the assessee came to the conclusion that the assessment has to be redone. In our view, the issue raised by the assessee cannot be pure question of fact but it is a mixed question of fact and law. Therefore, the assessee has to canvass all points by appearing before the assessing officer and availing the opportunity granted by the learned writ court. Thus, we find no grounds to interfere with the order passed by the leaned Single Bench and it will be open to the assessee to canvass all points on facts as well as on laws before the assessing officer which shall be considered by the assessing officer independently without being any manner influenced by his observations made in the order dated 8th April, 2023 as the said order has been set aside by the learned Single Bench.

The learned counsel appearing for the appellant submits that the jurisdictional issue should be decided by the assessing officer as a preliminary issue. We are not persuaded to accede the said submission but nonetheless the said issue can be raised by the assessee and the assessing officer shall decide the said issue as first amongst several other issues that will arise for consideration.

With the above observations and directions, the appeal and the connected applications are dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/