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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/187/2022
IA NO: GA/1/2022
WIZARD E-MARKETING PVT. LIMITED
VS.
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 4th January, 2023

<u>Appearance</u> :
Mr. Pratyush Jhunjhunwala, Adv.
…for appellant.
Ms. Smita Das De, Adv.
..for respondent
…for Union of India

The Court : - This intra-Court appeal by the writ petitioner is directed against the order dated 16.09.2022 in WP No. 2578 of 2022 by which the writ petition challenging the order passed under Section 148A (d) of the Income Tax Act, 1961 (the Act) dated 28.7.2022 and the consequential notice issued under Section 148 of the Act was dismissed on the ground that the appellant/assessee can raise all issues at the time of the reassessment proceedings. The correctness of the order passed in the writ petition has been challenged in this appeal.

We have heard Mr. Jhunjhunwala, learned Advocate appearing for the appellant and Ms. Smita Das De, learned standing Counsel for the respondent.

The reassessment proceedings commenced with the issuance of a notice under Section 148A(d) of the Act dated 31.5.2022. Along with the said notice in the annexure the case related information detail was furnished. Under the column 'packet details'; packet shows description it has been stated "Data of non genuine profits/losses in illiquid derivatives on BSE & USE". Information detail pertains to certain currency derivative losses pertaining to transaction done through Trinay Securities Trading Pvt.

Ltd. For the purpose of taking a decision in this appeal it may not be necessary for us to go into the factual details of the information detail which were furnished to the assessee. On receiving such notice the assessee the assessee submitted the reply/interim reply dated 15.6.2022. Apart from making submission on merits the assessee had specifically pointed out that the facts as pointed out in the case information detail were verified in the course of assessment under Section 143(3) and hence no re-assessment proceeding should be initiated. Furthermore, the information does not reveal that anyone has taken assessee's name as having done ingenuine transaction and anyone has taken assessee's name the assessee sought for copies of such documents. Further the assessee had pointed out that if any statement from any person has been recorded stating that the assessee is involved in any illiquid derivative trading then copies of such statement were sought for. Apart from above preliminary objection on the merits of the matter were also made apart from furnishing voluminious document which were in possession of the assessee as annexures to the reply dated 15.6.2022. In terms of the provisions of Section 148A the procedure that has to be followed by the assessing officer is to examine the reply quay the allegation made against the assessee and after affording an opportunity of personal hearing a speaking order is required to be passed. On a cursory perusal of the order dated 28.7.2022 passed under Section 148A(d) of the Act we find that the assessing officer has not mentioned anything about non genuine profit/loss on illiquid derivative of BSE 7 USE, rather he proceeds with regard to certain stocks and shares which were alleged to have been dealt with through Bombay Stock Exchange. We find that such was not the allegation in the notice issued under Section 148A(d) of the Act. That apart the order dated 28.7.2022 is a non speaking order. The Assessing Officer does not assign any reason for non acceding to the request made to the assessee for furnishing of the requisite document and statement of the persons who have appeared before the Assessing Officer or any other authority. The principles of natural justice would require that the assessee be afforded with effective opportunity to put forth their case. Non furnishing of the statement and document sought for would tantamount to violation of principles of natural justice. Had the Assessing Officer made any observation as to why this document/statement cannot be furnish that should be evident from the order which is conspicuously absent in the order impugned in the writ petition. Therefore, we are satisfied that the order dated 28.7.2022 calls for interference. The learned Advocate appearing for the appellant also submits that reassessment proceeding itself is barred by limitation. However, this plea appears to have not been raised in the reply dated 15.6.2022, however, this being a jurisdictional issue, it will be open to the assessee to canvass the said point at any stage of the proceedings as it goes to the root of the matter.

Thus for all the above reasons, the appeal is allowed. Consequently, the order passed in the writ petition is set aside and the writ petition is allowed and the order dated 28.7.2022 passed under Section 148A(d) of the Act is quashed as also the consequential notice under Section 148 of the Act dated 28.7.2022 is quashed and the matter is remanded to the Assessing Officer for fresh consideration. The Assessing Officer is directed to furnish all the statements and documents sought for by the appellant assessee and the assessee be provided with sufficient opportunity to file an additional reply in which they will be entitled to canvass the plea of limitation as well. After receiving the additional rely the assessing officer shall afford an opportunity of personal hearing and pass a speaking order on merits and in accordance with law.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.