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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/106/2022
IA No: GA/1/2022
SHIVANGAN WEALTH CONSULTANTS PRIVATE LIMITED
VS.
UNION OF INDIA & ORS.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 2nd January, 2023

<u>*Appearance*</u> :
Mr. Pranit Bag, Adv.
....for appellant

Mr. Prithu Dudhoria, Adv.
...for the respondent

The Court : This intra-court appeal is directed against the order dated September 27, 2022, passed in WPO No. 2659 of 2022.

The said writ petition was filed by the appellant challenging an order passed by the respondent under Section 148A(d) of the Income Tax Act, 1961 and the consequential notice issued under Section 148 of the Act, dated 30th July, 2022, for the assessment year 2016-17.

The writ petition was dismissed by the learned Single Bench on the ground that there has been no violation of the principles of natural justice and it will be open to the appellant assessee to canvass all points during the re-assessment proceedings. Aggrieved by such order, the appellant is before us by way of this appeal.

We have heard Mr. Pranit Bag, learned counsel appearing for the appellant and Mr. Prithu Dudhoria, learned counsel appearing for the respondent.

In response to the notice issued under Section 148A(d) of the Act dated 29th May, 2022, the appellant had submitted their reply dated 11th June, 2022. After referring to the decision of the Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal, 2022 SCC Online SC 543, the assessee pointed out that although the information and materials relied on by the revenue suggest income escaping assessment, on perusal of the alleged information, no materials were enclosed and the purported information, called as `Case related Information detail' downloaded from the Insight Portal had been mentioned. Further, the assessee stated that perusal of the said document shows that the same contains unsubstantiated allegations of some unnamed source about the assessee being beneficiary of non genuine profits/losses on illiquid derivatives on BSE and USE. Further, it was pointed out that the notice does not indicate relevant clause (a) or (b) of Sub-section (1) of Section 149 of the Act, under which clause the Assessing Officer had sought to initiate proceedings for reopening the assessment. Several other issues were also pointed out in the reply which appears to be very elaborate. This was followed by another reply dated 22nd June, 2022. Thus, the duty which is enjoined upon the Assessing Officer is to consider the reply given by the assessee and pass a speaking order considering the objections in cases where the assessee points out that the particulars furnished along with the notice under Section 148A(b) of the Act are inadequate or further information has been sought for, it is the duty on the part of the Assessing Officer to disclose to the assessee full information as the assessee is entitled to know as to what is the allegation which is made against them to enable them to suitably defend themselves. Unfortunately, this elementary principle has been lost sight of by the Assessing Officer who passed the order under Section 148A(d) of the Act dated 30th July, 2022.

To say the least, the order is a non-speaking order without taking note of any of the objections raised by the assessee which could be sufficient for us to interfere with the said order.

For the above reasons, the appeal is allowed. Consequently, the writ petition stands allowed.

The order dated 30th July, 2022 passed under Section 148A(d) of the Act and the consequential notice issued under Section 148, dated 30th July, 2022 are set aside and the matter stands remanded to the Assessing Officer for fresh consideration.

The Assessing Officer shall specifically disclose to the assessee the relevant details sought for by them in their reply dated 11th June, 2022 and thereafter furnish reasonable time to the assessee to submit further explanation/reply and after affording an opportunity of personal hearing to the assessee the Assessing Officer shall pass a reasoned order on merits and in accordance with law.

It goes without saying that the order passed by the Assessing Officer has been set aside on the ground that it is a non-speaking order, or non consideration of the reply given by the assessee, non furnishing of the documents sought for by the assessee etc. and therefore, the Court has not gone into the merits of the matter.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/S.Pal.