25.06.2024
Item No. 25
Ct. No. 01
AN/RP

M.A.T 161 of 2022
with
IA No. CAN 1 of 2022

Dr. (Smt) Keya Mitra
Vs.
Income Tax Officer, Ward No.50(1), Kolkata & Ors.

Mr. Shameek Ray
Ms. Bharati Ghosh
.... For the Appellant

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 11.01.2022 in WPA 21372 of 2021. In the said writ petition, the appellant had challenged the Assessment Order passed under Section 147 read with Section 144 of the Income Tax Act, 1961 dated 26.08.2021. The learned Single Judge declined to entertain the writ petition with an observation that it is open to the appellant to avail the remedy available under the Act. Questioning the correctness of the said order, the present appeal was filed. The appeal was admitted on 08.03.2022 and the following interim order was passed which is re-produced hereinunder:

> *"We have heard learned counsel for the appellant.*
>
> *The issue to be considered in this appeal is whether the ex parte*

assessment order dated 26th August, 2021 passed in the name of a dead person is valid in law.

The appellant/writ petitioner is the daughter of Smt. Aloka Ray, who passed away on 9th September, 2015. On receipt of notice dated 30th January, 2021 under Section 142 (1) of the Income Tax Act, 1961 the appellant had submitted a representation to the Assistant Commissioner of Income Tax, National Faceless Assessment Centre duly reporting about the demise of her mother and also stating that she does not have any idea regarding the transaction or the documents pertaining to the transaction and she is not in a position to produce any document pertaining to the Income Tax allegedly to be payable by her mother. The said representation was uploaded and acknowledgement has been generated showing the grievance dated 4.2.2021. In the column 'Grievance Description' the appellant has clearly mentioned about the demise of her mother and she does not have idea of the transaction done by her mother. Further, the appellant also requested to be intimated as to how she can assist the Income Tax Department to resolve the issue as stated in the notice under Section 142(1) dated 30.01.2021.

The procedure adopted by the Faceless Assessment Centre, which culminated in the order dated 26.08.2021 under Section 147 read with Section 144 of Income Tax Act passed by the Assessing Officer that the Assessing Officer nowhere mentions about the grievance which was uploaded by the appellant in the department's website. Therefore, we are prima facie satisfied that such order could not have been passed ignoring the grievance expressed by the appellant which would be a good ground to entertain a writ petition.

The appeal is admitted. Issue fresh notice to the respondents.

> *Till the appeal is heard and decided the assessment order dated 26.08.2021 which was impugned in the writ petition and all other consequential proceedings shall remain stayed.*
>
> *The matter is returnable six weeks hence."*

2. There is nothing on record placed by the Department to show that what has been recorded in the above order is factually incorrect, in regard to the representation given by the appellant stating that her mother is no more and acknowledgment has been generated showing the grievance dated 04.02.2021. In the grievance, the appellant has clearly stated about the demise of her mother and that she does not have any idea about the transaction made by her. The appellant had been fair enough to state that she may be intimated as to how she can assist Income Tax Department to resolve the issue as stated in the notice issued under Section 142(1) dated 30.01.2021. However, none of the submissions made by the appellant had been taken note of in the re-assessment order that has been passed by the National Faceless Assessment Centre. We find that the re-assessment has been made without considering the relevant particulars and, in particular, the submission made by the appellant in response to the notices issued by the Assessing

Officer much earlier at the time the matter was not before the National Faceless Assessment Centre.

3. Thus, for the above reasons, we hold that the re-assessment order to be unsustainable in law. Hence, the appeal and the writ petition stand **allowed**. The order passed in the writ petition is set aside. The order impugned in the writ petition viz. the re-assessment order is quashed.

4. Consequently, the connected application also stands allowed and disposed of.

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)