09.01.2024
Item No.293
Ct. No.1
PG/KS

MAT 435 of 2023
With
I.A. No.CAN 1 of 2023

Arup Kumar Chatterjee
Vs.
Union of India & Ors.

Mr. Brijesh Kumar Singh
Mr. Subash Agarwal
Mr. Nitish Bhandary .... for the appellant.

Mr. Vipul Kundalia
Mr. Kaushik Dey
Mr. Tapan Bhanja ... for the respondents.

1. This intra-Court appeal by the writ petitioner is directed against the order dated 13th December, 2022 in WPA 27010 of 2022. In the said writ petition, the appellant had challenged the order passed under Section 148A(d) of the Income Tax Act, 1961 (for brevity, "the Act") dated 29th July, 2022 on the ground of violation of principles of natural justice, non-application of mind and that the re-opening of the assessment was a clear case of change of opinion.
2. As could be seen from the notice dated 148A(b) dated 1st June, 2022, the allegation was regarding the inflation of the Written Down Value (WDV).
3. The appellant had submitted his objections/replies to the show-cause notice by reply dated 30th June, 2022 clearly explaining the transaction. It was also pointed out that in the assessment, which was

completed under Section 143(3) of the Act by order dated 26th December, 2018, this issue was specifically dealt with in paragraph 9, 5 of the said assessment order and certain additions have been made. Therefore, it was pointed out that it is a clear case of change of opinion.

4. The assessing officer, while passing the order under Section 148A(d) of the Act dated 29th July, 2022 has extracted a portion of the reply given by the assessee dated 30th June, 2022 and by a single line rejects the same by stating that no cogent reply along with documents have been received from the assessee's end.

5. This finding is absolutely perverse, outcome of total non-application of mind. Furthermore, the issue based on which re-opening was proposed was subject-matter of consideration in the scrutiny of assessment, which culminated in an assessment order dated 26th December, 2018, wherein the assessing officer on the very self-same issue after considering the reply given by the assessee, partially accepted the same and has also made certain additions.

6. Thus, we find that the re-opening of the assessment was wholly unjustified and without jurisdiction.

7. For the above reasons, the appeal and the connected application (I.A. No.CAN 1 of 2023) are allowed, the

order passed in the writ petition is set aside. Consequently, the writ petition is allowed and the order impugned in the writ petition passed under Section 148A(d) of the Act dated 29th July, 2022 and a consequential notice issued under Section 148 of the Act are quashed.

8. No costs.
9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)