18.04.2024
Item No.5
Court No.5
Saswata

W.P.A. 9463 of 2024
Dr. Mohammed Shamim Raza
Versus
Union of India & Ors.

Mr. Md. Javed Sultan
Mr. Hare Krishna Halder
Mr. Koushik Bhattacharya
…For the petitioner
Mr. Omnarayan Rai
…For the respondents

1. The present writ petition has filed, inter alia, challenging the draft order dated 15th March 2024 purportedly passed under Section 144 (C)1 of the Income Tax act, 1961[1] on the ground of violation of principles of natural justice.

2. The petitioner claims to be a retired doctor and a senior citizen being an income tax assessee, having PAN no. AHFPR7471Q. At present he is residing with his son at Saudi Arabia. It is the petitioner's case that he had received a notice dated 16th November 2023 under Section 142(1) of the said Act, for the assessment year 2015-16, after almost 10 years from the end of the assessment year. Although, the petitioner had duly responded to the said notice, to the petitioner's utter surprise a show cause notice dated 8th March 2024 was issued seeking explanation from the petitioner as regards cash deposit amounting to Rs.60,28,770/- made by him in three bank accounts during the assessment

year 2015-16, treating the deposits as income under Section 69A of the said Act.

3. Since, at the relevant point of time the petitioner was stationed at Saudi Arabia, he had filed his reply through "e-proceedings" on 8th March 2024 and had sought for an adjournment till the end of March 2024, for him to comply with the notice. At his instance, the department had adjourned the proceeding and by issuing a notice dated 11th March 2024 which is at page 66 of the writ petition, informing him that the next date of hearing was fixed on 15th March 2024 at 11.00 A.M.

4. Mr. Sultan, learned advocate appearing for the petitioner submits that although, in terms of the aforesaid notice, the petitioner was required to place his case on the adjourned date, however, to the petitioner's utter surprise on 14th March 2024 he received an e-mail communication with two attachments, being the show cause notice dated 8th March 2024 and the draft order under Section 144C(1) of the said Act, purportedly dated 15th March 2024. It is submitted that even without affording an opportunity to the petitioner to respond, on the adjourned date the draft order dated 15th March 2024 had been prepared on 14th March 2024. Apart from gross illegality the

[1] Hereinafter referred to as the "said Act"

aforesaid constitutes failure of justice and on the said ground alone the same should be set aside.

5. Mr. Rai, learned advocate appearing for the respondents confirms the fact that by a notice dated 11th March 2024 the hearing of the matter was adjourned and was fixed on 15th March 2024.

6. Having regard to the aforesaid and without going into the other issues raised in the writ petition and taking into consideration the fact that the draft order was irregularly prepared and served on the petitioner on 14th March, 2024, without waiting for the response from the petitioner in terms of the notice dated 11th March, 2024, I am of the view that justice will be sub-served if the aforesaid draft order passed under Section 144 (C) 1 of the said Act is set aside by permitting the petitioner a further opportunity to present his case.

7. In view thereof, I set aside the draft order dated 15th March 2024 and direct the respondent no. 3 to fix a date of hearing and to communicate the same to the petitioner and pass a draft order under Section 144 (C) 1 of the said Act, upon hearing the petitioner, preferably within a period of three weeks from date.

8. If the petitioner does not respond to the said communication, it shall be open to the respondent

no. 3 to take appropriate steps as are permissible in law.

9. It is made clear that the aforesaid order has been passed on the basis of failure of natural justice and without going into the other questions involved in the writ petition. It shall, however, be open to the petitioner to raise other questions before the appropriate authorities, if so advised.

10. With the above observations and direction, the writ petition being WPA 9463 of 2024 is **disposed of**.

11. Since, I have not called for any affidavits, the allegations made in the instant writ petition are deemed not to have been admitted by the respondents.

(*Raja Basu Chowdhury, J.*)