09.05.2024
Item No.
ML-40
Court No.5
Saswata

W.P.A. 10271 of 2024

Vindya Agencies Pvt. Ltd. & Anr.
Versus
Union of India & Ors.

Mr. Arvind Agarwal
Mr. F. Ghaffar
...For the petitioners
Mr. Om Narayan Rai
...For the respondents

1. Affidavit of service filed in Court today is retained with the record.
2. The present writ petition has been filed, inter alia, challenging the assessment order dated 26th March 2024 read with Section 144B of the Income Tax Act, 1961[1] on the ground of violation of principles of natural justice.
3. The petitioner no. 1 is a private limited company and is an assessee within the meaning of the provisions of the said Act. It is the petitioners' case that on 23rd march 2024 the petitioner no. 1 was served with a show cause notice intimating the petitioners as regards the proposed variation in respect of the return filed by the petitioner no. 1 for the assessment year 2015-16 and the petitioner no. 1 was called upon to file its response through its registered e-filing account on or before 13.00 hours of 25th March 2024.

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

4. According to the petitioners, since 25th March 2024 was a holiday on account of *"Holi festival"*, the petitioner no. 1 by a response dated 26th March 2024 had sought for an adjournment and had requested the department to allow the petitioner no.1, additional time till 27th March 2024, to file its reply. Subsequently, on 26th March 2024, at about 10.58 hours, the petitioner no. 1 had requested the authorities to offer personal hearing through video conference facility.
5. Mr. Agarwal, learned advocate appearing for the petitioners by drawing attention of this Court to pages 110 and 112 of the writ petition submits that notwithstanding receipt of the petitioner no.1's request for adjournment and for personal hearing, the authorities had purported to pass and communicate the assessment order vide an email communication dated 26th March 2024, which was delivered to the petitioner no.1's e-mail account on the same date at around 13.58 hours.
6. It is submitted that the aforesaid order has been passed without offering adequate opportunity to the petitioner no. 1 to respond to the show cause. Admittedly, 25th March 2024 was a holiday. As such, immediately on the following date, the petitioner no. 1 had made a request for an adjournment, so as to enable the petitioner no. 1 to

respond within the additional time. But, the authorities by ignoring the same had purported to pass the order dated 26th March 2024. According to Mr. Agarwal, the aforesaid order stands vitiated on the ground of violation of principles of natural justice and as such this Hon'b'le Court may be pleased to set aside the same, thereby remanding the matter to the authorities.

7. Mr. Rai, learned advocate enters appearance on behalf of the respondents and opposes the present writ petition.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record.

9. Admittedly, in this case, it would be apparent that a show cause dated 22nd March 2024 was served on the petitioner no. 1 under Section 147 read with Section 144B of the said Act, in respect of the assessment year 2015-16 intimating the petitioner no. 1 of the proposed variation, thereby calling upon the petitioner no. 1 to respond to the said show cause notice on or before 13.00 hours of 25th March 2024. Admittedly, since 25th March 2024 was a holiday on account of *"Holi festival"* the petitioner no. 1 could not file its response within the time provided. The petitioner no. 1 had, however, uploaded an adjournment application on the

portal on 25th March 2024. The factum of uploading of such adjournment application would corroborate from the acknowledgement appearing at page 111 of the writ petition. The petitioner no. 1, had subsequently also made a request for personal hearing via e-mail on 26th March 2024.

10. In my view, once, the respondents received a request for adjournment, they ought to have considered the same having regard to the grounds on which such adjournment was sought for. In the present case, it is apparent that the petitioner no. 1 had been denied opportunity to appropriately respond to the show cause notice.

11. Having regard to the aforesaid the assessment order dated 26th March 2024 passed under Section 147 of the said Act read with Section 144B of the said Act cannot be sustained and the same is accordingly set aside and quashed.

12. The authorities are further directed to dispose of the said proceeding under Section 147 of the said Act, within a period of 6 weeks from date upon giving an opportunity of personal hearing to the petitioners through video conference facility.

13. The petitioner no.1 shall be at liberty to file its response to the show cause notice within a period of 2 weeks from date. In the event, such response is filed within the period mentioned hereinabove, the

authorities shall consider and dispose of the same in accordance with law in terms of the observations made herein.

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

15. With the above directions and observations, the writ petition being WPA 10271 of 2024 is accordingly disposed of.

16. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)