M/L 58
09.05.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10674 of 2024

Skipper Infrabuilders Private Limited & Anr.
Versus
Union of India & Ors.

Mr. Himangshu Kumar Ray
Ms. Shiwani Shaw
... For the petitioners.

Mr. Aryak Dutt
Ms. Riya Kundu
... For the respondents.

1. Affidavit of service filed in Court today is taken on record.

2. Supplementary affidavit filed in Court today on behalf of the petitioners is also taken on record.

3. The present writ petition has been filed, inter alia, questioning the short response period afforded to the petitioners in the notice dated 23rd March, 2024, issued under Clause b of Section 148A of the Income Tax Act, 1961 (hereinafter referred to as the "said Act"), for the Assessment Year 2018-19.

4. Mr. Ray, learned advocate representing the petitioners, by placing before this Court the supplementary affidavit affirmed by the petitioners on 2nd May, 2024 submits that during pendency of the present writ petition the order under Section 148A(d) of the said

Act has been passed on 25th April, 2024. He submits that at the first instance, the petitioners were given only six days' to respond to the show-cause notice out of which there were only two working days. By referring to the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Girdhar Gopal Dalmia v. Union of India***, reported in **(2022) 141 taxmann.com 251 (Calcutta)**, he submits that the Department is obliged to provide the assessee at least a minimum period of seven (7) days to respond to a show-cause notice under Section 148A(b) of the said Act. According to him, since the petitioners were not given appropriate opportunity to respond to the show cause issued under Section 148A(b) of the said Act, the order passed by the respondents stands vitiated and should be set aside.

5. Mr. Dutta, learned advocate enters appearance on behalf of the respondents. He does not dispute the fact that the petitioners only got two working days time to respond to the show cause. He, however, submits that the petitioners had submitted their response to the said show cause on 27th March, 2024 and thereby sought for fifteen days time. The order under Section 148A(d) of the said Act was passed after fifteen days and the submit response tab on the portal was kept open for a period of fifteen days, i.e. till 17th April, 2024 and only thereafter the order dated 25th April, 2024, which is impugned had been passed. As

such, the petitioners cannot complain of violation of principles of natural justice. The petitioners did not file any response. Following the aforesaid the order dated 25th April, 2024 under Section 148A(d) of the said Act had been passed. No case has been made out for interference. The writ petition deserves to be dismissed with costs.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case it is noticed that a show cause was issued on 23rd March, 2024 under Clause b of Section 148A of the said Act, calling upon the petitioners to file their response on/or before 29th March, 2024. It is not in dispute that the petitioners had only two working days to give their response. As such, the petitioners on 27th March, 2024 had sought for fifteen days time. Since, the respondents did not accede to the petitioners' prayer, the present writ petition has been filed.

7. Although, Mr. Dutt, leaned advocate representing the respondents has claimed that submit response tab on the portal was kept open upto 17th April, 2024, there is no communication from the respondents extending the time for the petitioners to upload their response.

8. Having regard to the aforesaid, I am of the view that the petitioners were denied reasonable opportunity to appropriately respond to the show cause. It may be

relevant to take note of the observations made by the Hon'ble Division Bench of this Court in the case of ***Girdhar Gopal Dalmia*** (supra). The relevant portion of the said judgment is extracted hereinbelow:-

> **"***5.The learned standing counsel would submit that the assessee has submitted his reply which has also been referred to by the Assessing Officer in his order under section 148A(b) of the Act. As rightly pointed by the learned senior Advocate for the appellant that nowhere in the reply given by the assessee, there is any elaborate discussion about sections 148, 148A of the Act and probably there occurred a factual mistake at the hands of the Assessing Officer. The assessee had enclosed certain documents along with the reply and had made submissions on merit and on our reading, we find that no elaborate discussion about sections 148 or 148A of the Act. Be that as it may, the opportunity of hearing to be provided should be reasonable and not illusory. If the appellant had received the show cause notice on 17th March, 2022 online, then for calculating the period of 7 days, namely 17th March, 2022 has to be excluded. If that is so, the period of 7 clear days does not stand fulfilled in the case on hand. Apart from that, 18th March, 2022, 19th March, 2022 and 20th March, 2022 are to be excluded since they are all holidays on account of Holi festival. Further, we state that the State of West Bengal had declared 17th March, 2022 as also a holiday though for the Central Government, no such holiday was declared and an identical issue was considered by us in the case R. N. Fashion (supra).*

> *6. Considering all these factors, we are of the view that the assessee should be granted an opportunity by the Assessing Officer in terms of clause (b) of section 148A of the Act, which provides for an opportunity of being heard to the assessee. Four such reason, we are inclined to remand the matter back to the Assessing Officer for fresh consideration. The notice issued under section 148 of the Act dated 29th March, 2022 shall not be enforced and a fresh action can be initiated in accordance with law after complying with the following direction.*"

9. Having regard to the aforesaid, I am of the view that the order dated 25th April, 2024 passed under Section 148A(d) of the said Act cannot be sustained and the same is accordingly set aside. Consequentially, the notice under Section 148 of the said Act dated 25th April, 2024 also stands vitiated. Accordingly, the notice dated 25th April, 2024 issued under Section 148 of the said Act also stands set aside.

10. The petitioners shall be at liberty to submit its reply with the respondents within a period of two weeks from date and upload the reply online, for the said purpose the respondents are directed to ensure that the submit response tab on the portal is kept open for the petitioners to submit their response in terms of the aforesaid order.

11. On receipt of such reply within the period mentioned above, the authorized representative of the petitioners shall be given an opportunity of personal hearing through video conferencing and the documents that the assessee may produce shall be considered and a fresh order under clause (d) of Section 148A of the said Act, be passed in accordance with law.

12. With the above observations and directions, the writ petition stands disposed of.

13. There shall be no order as to costs.

14. Since no affidavit-in-opposition has been called for the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)