16.05.2024
Item No.
ML-85
Court No.5
Saswata

W.P.A. 11627 of 2024

M/s Sym Singhal Alloys Private Limited & Anr.
-vs-
Union of India & Ors.

Mr. Arijit Chakraborty
Mr. Prabir Bera
Mr. Deepak Sharma
...For the petitioners
Mr. Om Narayan Rai
...For the State

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 20th March, 2024 for the assessment year 2018-19, passed under Section 147 read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as the "said Act")
3. Mr. Chakraborty, learned advocate appearing for the petitioners by drawing attention of this Court to the assessment order submits that although, the aforesaid assessment was conducted on the basis of the information and materials received from the office of the DDIT (Investigation), U2 (1), Kolkata as also the incident report shared by the GST department, the aforesaid documents had not been

made over to the petitioners which has the effect of vitiating the aforesaid order.

4. It is further submitted that out of 5 entities appearing at page 181 of the writ petition who are alleged as fake entities, the GST department had proceeded against only four of them. However, in the present case all the 5 entities have been treated to be fake entities and the entire purchase made by the petitioner from the aforesaid 5 entities had been added back to the petitioner's income.

5. In the facts as noted above, it is submitted that the aforesaid order cannot be sustained since the petitioner had been denied the opportunity to appreciate the purport of the enquiries, and thereby could not appropriately respond to the same.

6. Mr. Rai, learned advocate appearing for the respondents at the very outset submits that the order impugned in the present writ petition is an appealable order. The said order had been passed on 20th March 2024 and the present writ petition had been filed on 23rd April 2024. As such, the ordinary period for maintaining an appeal under the provisions of the said Act, has also expired. In such circumstances, this Court ought not to entertain the present writ petition.

7. By drawing attention of this Court to the notice issued under Section 148A(b) of the said Act dated 21st March 2022 for the assessment year 2018-19 appearing at page 119 of the writ petition, it is submitted that the petitioner was duly notified with regard to the circumstances under which the said proceeding had been initiated. Unfortunately, the information based on which the said proceeding had been initiated, was not made available to the petitioner along with the said notice dated 21st March 2022. Such defect having come to light, the department by an email communication dated 23rd March 2022, i.e., within 2 days from the date of service of such notice caused the information to be made available to the petitioner. In support of his contention Mr. Rai has placed before this Court a print out of the original email communication dated 23rd March 2022 which had been forwarded to him, enclosing therewith all informations based on which such proceeding had been initiated.

8. The relevant documents as made over in Court today by Mr. Rai are retained with the record.

9. By drawing attention of this Court to the order under Section 148A(d) of the said Act, Mr. Rai submits that no new information has been disclosed in the assessment order. The aforesaid order under Section 148A(d) of the said Act would

demonstrate the circumstances leading to initiation of proceeding under the said provision. Not only the information received from the DDIT, Investigation U2(1), Kolkata was taken into consideration but also the GST department's incident report was also taken into consideration, as is reflected in the said order. At no point of time the petitioner has challenged the same.

10. The petitioner also did not respond to the notice under Section 148A(b) of the said Act. In fact, when an intimation was given to the assessee in accordance with the procedure laid down under Section 144B of the said Act vide notice dated 30th January 2023, the petitioner did not seek for the aforesaid documents. As and by way of an afterthought that too after expiry of the period for preferring the appeal the present writ petition has been filed. According to Mr. Rai, the same is liable to be dismissed.

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

12. Admittedly, in this case, it is noticed that the order of assessment issued under Section 147 read with Section 144B of the said Act was preceded by a proceeding under Section 148A of the said Act and not only a notice under Section 148A(b) of the

said Act was issued but an order was passed under Section 148A(d) of the said Act. The petitioner, however, had not responded to the said notice under Section 148A(b) of the said Act. The disclosures made in the order of assessment were all disclosed in the notice under Section 148A(b) of the said Act and in the order under Section 148A(d) of the said Act.

13. Be that as it may, since the petitioner has an alternative remedy in the form of an appeal, I am of the view that all these points can be agitated by the petitioner before the appellate authority and if the petitioner files an appeal before the appellate authority and makes an application for disclosure of the documents and other information, it shall be open to the appellate authority to consider the same, subject to the appeal being registered upon condonation of delay, in accordance with law.

14. I make it clear that I have not gone into the merits of the case and it shall be open to the petitioner to raise all points before the appellate authority, if so advised.

15. With the above observations and directions, the writ petition being WPA 11627 of 2024 is disposed of.

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

(*Raja Basu Chowdhury, J.*)