

Form No.J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 12504 of 2024

M/s. Shalimar Wire Industries Ltd.

Versus

Union of India & Ors.

For the petitioner : Mr. S.M.Surana

For the respondents : Mr. Prithu Dudhoria

Heard on : 10.06.2024

Judgment on : **10.06.2024**

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is retained with the records.
2. The present writ petition has been filed, *inter alia*, challenging the order of assessment dated 25th March 2024 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "Said Act") read with Section 144B of the said Act. Records reveal that the aforesaid order was preceded by a notice under Section 143(2) of the said Act dated 2nd June 2023 in respect of the returned income of the petitioner for the assessment year 2022-23. It is not in dispute that subsequently notices under Section

142(1) of the said Act was issued on 2nd November 2023 as also on 14th December 2023.

3. The petitioner had responded to both the aforesaid notices. Subsequently the faceless assessment unit had issued a show cause dated 11th March 2024 for the assessment year 2022-23, calling upon the petitioner to respond to the proposed variations provided for therein. Particulars of the proposed variations were duly indicated in the said show cause notice. As would appear from the aforesaid show cause notice, the petitioner was offered opportunity to respond to the same by either accepting the proposed variations or in the alternative, by filing its written response objecting to the same on or before 18th March 2024.
4. It is not in dispute that the petitioner on 18th March 2024 instead of filing its response to the show cause had sought for an adjournment. By an order dated 19th March 2024 the faceless assessment unit taking into consideration the fact that further delay would result in the proceeding getting time barred, had granted limited opportunity to the petitioner to respond to the show cause dated 11th March 2023, latest by 22nd March 2024.
5. The petitioner contends that on 22nd March 2024 although, the petitioner had attempted to upload its response along with all documents at around 17.33 hours, the online portal did not permit the petitioner to upload the response as the “*submit response*” button had been deactivated. It is in such

circumstances that the petitioner on 22nd March 2024 at around 18.55.48 hours had uploaded its response to the Samadhan Portal recording the above development.

6. Mr. Surana, learned advocate appearing for the petitioner by placing reliance on an email communication dated 26th March 2024 appearing at page 26 of the instant writ petition submits that the samadhan portal had forwarded the petitioner's response to the faceless assessment unit only on 26th March 2024 at around 11.00 A.M. and by such time the assessment order dated 25th March 2024 had already been uploaded. As such, the faceless assessment unit, without considering the petitioner's response had disposed of the said proceedings. This according to the petitioner has the effect of vitiating the proceedings as the petitioner had been denied the opportunity to respond to the proposed variations.
7. It is submitted that this Court may be pleased to set aside the assessment order and to remand back the matter to the faceless assessment unit, for re-determining the issue on the basis of the response filed by the petitioner.
8. Mr. Dudhoria, learned advocate appearing for the respondents submits that the assessment order dated 25th March 2024 which has been called in question is an appellable order. Admittedly, the writ petition has been filed beyond 30 days from the date of passing of such order. Ordinarily, time to file the appeal against

the assessment order passed under Section 143(3) of the said Act, read with Section 144B of the said Act is 30 days. There is no explanation for the delay in filing the writ petition. No explanation has also been offered by the petitioner as to what prejudice the petitioner had suffered by reasons of non consideration of the petitioner's reply. The purported reply to the show cause filed with the samadhan portal has also not been disclosed. No case for interference has been made out and as such the writ petition should be dismissed with costs.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record.
10. In this case it is noticed that the petitioner challenges the order passed under Section 143(3) of the said Act, read with Section 144B of the said Act dated 25th March 2024. Admittedly, prior to issuance of the aforesaid order notices under Sections 143(2) and 142(1) of the said Act had been issued. The petitioner had duly responded to the same. In this case, the petitioner was well aware that the time for completion of the proceedings was about to expire on 31st March 2024. Notwithstanding the aforesaid the petitioner instead of responding to the notice dated 11th March 2024 had sought for an adjournment on 18th March 2024. At the instance of the petitioner time to file its response was extended till 22nd March 2024.

11. From the documents on record it would appear that the petitioner had attempted to file its response after 5.00 P.M. on 22nd March 2024, i.e., beyond the office hours. The communication made by the petitioner to the samadhan portal has also not been disclosed. The petitioner has failed to identify what prejudice was caused to the petitioner by reasons of the assessing officer not considering its response and/ or whether the response submitted by the petitioner was different from the previous response submitted by the petitioner to the notice issued under Section 143(2) of the said Act.
12. It would appear that the order passed under Section 143(3) of the said Act is an appealable order. Although, the petitioner has attempted to made out a case of violation of principles of natural justice in absence of the petitioner being able to demonstrate the prejudice caused, I am of the view that the petitioner cannot be entitled to the reliefs as prayed for. However, taking into consideration the fact that an efficacious remedy in the form of appeal is available, I am of the view that justice would be subserved if the petitioner is granted liberty to file an appeal from the order dated 25th March 2024.
13. If such appeal is filed within a period of 15 days from date along with an application for condonation of delay, the appellate authority, upon condoning the delay, shall hear out and dispose of the appeal on merits taking into consideration the response

given by the petitioner and the grounds raised by the petitioner in the appeal, preferably within a period of 6 weeks from the date of filing of the appeal subject to compliance of other formalities by the petitioner, in accordance with law.

14. With the above observations and directions, the writ petition being WPA 12504 of 2024 is accordingly disposed of.

15. There shall be no order as to costs.

16. 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.)

Saswata
Assistant Registrar (Court)