12.06.2024
Item No.
M/L 31
Court No.5
Saswata

W.P.A. 12805 of 2024

Annadata Agro Industries Private Limited & Anr.
Versus
Union of India & Ors.

Mr. Hemant Tiwari
Mr. Shounak Mukhopadhyay
...For the petitioners
Mr. Om Narayan Rai
...For the respondents

1. Affidavit of service filed in Court today is retained with the record.
2. At the very outset, Mr. Tiwari learned advocate appearing for the petitioners prays for leave to add Mohammad Jony Sekh, son of Sekh Jakir Ali, who is one of the directors of the petitioner no.1/company to be added as the co-petitioner along with the petitioner/company in the present writ petition.
3. Such prayer is not opposed by Mr. Rai, learned advocate appearing for the respondents.
4. Having regard to the aforesaid leave is granted to the petitioner's advocate-on-record to add Mohammad Jony Sekh, son of Sekh Jakir Ali as the petitioner no. 2 in the present writ petition. Let the aforesaid incorporation be carried out in the petition in course of this day.

5. The present writ petition has been filed, inter alia, challenging the assessment order dated 31st 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 on the ground of violation of principles of natural justice.

6. The petitioner no. 1 is a private company and is an assessee within the meaning of the provisions of the said Act. It is the petitioners' case that on 26th March 2024 the petitioner no. 1 was served with a showcause notice intimating the petitioners as regards the proposed variation in respect of the return filed by the petitioner no. 1 for the assessment year 2022-23 and the petitioner no. 1 was called upon to file its response by 19.00 hours of 27th March 2024. According to the petitioners since 26th March 2024 was a holiday on account of "*holi festival*" the petitioner no. 1 could not file its response within the time prescribed. The petitioner no. 1, however, was ultimately able to file its response on 30th March 2024 in the portal of the respondents. Such fact would appear from the online acknowledgment issued by the respondents on 30th March 2024 appearing at page 26 of the present writ petition.

7. Mr. Tiwari, learned advocate submits that notwithstanding the fact that the petitioner was ultimately able to file its response in the online portal of the respondents, such response had not been taken into consideration by the faceless assessment unit in its order dated 31st March 2024. By drawing attention of this Court to the aforesaid order dated 31st March 2024, it is submitted that the faceless assessment unit in paragraph 2.4.7 of the aforesaid order has clearly and in no uncertain terms recorded that the petitioner no.1 had not furnished any reply within the stipulated date and time and by ignoring the reply filed by the petitioner no.1, had decided the matter. According to the petitioners, the petitioner no. 1 did not get reasonable opportunity to respond to the show cause. In any event, although the petitioner no.1 had somehow been able to file its response on 30th March 2024, such response had been ignored by the faceless assessment unit while passing the order of assessment.

8. According to Mr. Tiwari the aforesaid constitutes violation of principles of natural justice and this Court may be pleased to set aside the assessment order and remand the matter to the authorities for a fresh decision on the basis of

the response given by the petitioner no.1, and upon offering the petitioners an opportunity of hearing.

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

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

11. Admittedly, in this case it is apparent that the show cause notice dated 26th March 2024 had been digitally signed on 26th March 2024 at around 18.17.08 hours. As such, the same could not have been served on the petitioners prior to 18.17 hours of 26th March 2024. It would also appear that the petitioner no. 1 was barely provided 24 hours to respond as the response of the petitioner no. 1 was required to reach the respondents by 19.00 hours on 27th March 2024. Admittedly, 25th and 26th March 2024 were holidays on account of "*holi festival*".

12. Having regard to the aforesaid, I am of the view that the petitioners have been able to make out a case that the petitioner no. 1 did not get reasonable opportunity to respond to the show cause. Be that as it may, it is noted that the petitioner no. 1 had filed its response on 30th

March 2024, which fact would corroborate from the online acknowledgment issued by the respondents which is at page 26 of the writ petition. Obviously, therefore, the "*submit response button*" tab was kept activated for the petitioner no. 1 to file its response. Once such response was on record, in my view, the faceless assessment unit was obliged to consider the same.

13. From the materials on record including the order dated 31st March 2024 it would appear that the faceless assess unit has not considered the response submitted by the petitioner no. 1 by recording that no response had been filed by the petitioner no.1 within the stipulated time. The aforesaid appears to be a mechanical approach adapted by the faceless assessment unit.

14. In view thereof, the order dated 31st March 2024 passed under Section 143(3) read with Section 144B of the said Act cannot be sustained and the same is accordingly set aside and quashed. The matter is remanded back to the faceless assessment unit for taking fresh decision on the basis of the response already submitted by the petitioner no. 1 and by giving the petitioner no. 1 an opportunity of personal hearing by providing the petitioner no.1 with online video

conference link. The authority shall dispose of the matter preferably within a period of 6 weeks from the date of communication of this order in the manner as directed hereinabove.

15. With the above directions and observations, the writ petition being WPA 12805 of 2024 is disposed of.

16. 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.

17. 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.*)