08.07.2024
Item No.8
Court No.5
Saswata

W.P.A. 13568 of 2024

Anup Kumar Agarwal
Versus
Union of India & Ors.

Mr. Himangshu Kumar Roy
Mr. P.K.Ray
Mr. S. Podder
Ms. S.Shaw
...For the petitioner

Mr. Aryak Dutt
Mr. Prithu Dudhoria
...For the respondents

1. The present writ petition has been filed, *inter alia*, challenging not only the show cause notice issued under Section 148A(b) of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") dated 15th March 2024 for the assessment year 2017-18 but also the adjudication order dated 30th March 2024 passed under Section 148A(d) of the said Act for the assessment year 2017-18. The petitioner also challenges the notice issued under Section 148 of the said Act on the ground that the same has been issued by the jurisdictional assessing officer, although the same was required to be issued in a faceless manner in terms of the provisions contained under Section 151A of the said Act.

2. Mr. Ray, learned advocate appearing for the petitioner by drawing attention to the notice under Section 148A(b) of the said Act submits that despite provisions of Section 148A of the said Act, requiring the assessees to be provided with a notice of not less than 7 clear days, in the instant case only 5 days time was granted. Additionally, despite the fact that the

petitioner had requested the jurisdictional assessing officer to afford the petitioner an opportunity of personal hearing, no such opportunity of hearing was afforded to the petitioner. Independent of the aforesaid, the notice issued by the jurisdictional assessing officer under Section 148 of the said Act dated 30th March 2024 for the assessment year 2017-18 has also been challenged on the ground that the same has not been issued as per the provisions of Section 151A of the said Act.

3. Mr. Dutt, learned advocate appearing for the respondents submits that it is now academic as to whether the petitioner had been afforded 7 clear days to respond to the show cause notice, as the petitioner had already responded to the show cause notice. He, however candidly acknowledges the fact that despite the petitioner making request for personal hearing, no personal hearing had been afforded to the petitioner. Such fact would appear from the order dated 30th March, 2024 issued under Section 148A(d) of the said Act.

4. In answer to a query of this Court, he submits that the respondents are ready and willing to afford the petitioner, an opportunity of hearing.

5. Having heard the learned advocates appearing for the respective parties and considering the materials on record, since it appears that the petitioner had

sought for an opportunity of personal hearing and despite making such request, the respondents had not afforded the same and having regard to the fact that a lesser period was given to the petitioner to respond to the show cause notice, I am of the view that the mater should be remanded back to the jurisdictional assessing officer for a decision afresh.

6. Having regard to the aforesaid, I set aside the order passed by the jurisdictional assessing officer dated 30th March 2024 passed under Section 148A(d) of the said Act, for the assessment year 2017-18. The petitioner shall be at liberty to file its additional response to the aforesaid show cause, within a period of 10 days from date. If the petitioner files its additional response or in absence thereto, the jurisdictional assessing officer upon affording opportunity of hearing to the petitioner, shall dispose of such proceeding in accordance with law by passing a reasoned order, within 8 weeks from the date of communication of this order.

7. As a sequel thereto, the notice issued under Section 148 of the said Act dated 30th March 2024 for the assessment year 2017-18 stands set aside. Having regard to the above, I am of the view that it is not necessary at this stage to go into the issue of competence of the jurisdictional assessing officer to issue a notice under Section 148 of the said Act.

8. With the above observations and directions, the writ petition being WPA 13568 of 2024 is disposed of.

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

(*Raja Basu Chowdhury, J.*)