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16.07.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14265 of 2024

Monika Jaiswal
Versus
Union of India & Anr.

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Ms. Shiwani Shaw
... For the petitioner.

Mr. Amit Sharma
...For the respondents.

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

2. The present writ petition has been filed, inter alia, challenging the show cause notice dated 15th March, 2024, issued by the respondent no.2 and the assessment order dated 26th March, 2024 passed by the respondent no.2 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as the "said Act"), inter alia, including the notice of demand dated 26th March, 2024 issued under Section 156 of the said Act.

3. Mr. Ray, learned advocate appearing on behalf of the petitioner submits that the present writ petition is confined to the failure on the part of the respondent no.2 to afford appropriate opportunity to the petitioner

to respond to the show cause notice issued in connection with the assessment proceeding dated 15th March, 2024 for the Assessment Year 2022-23. He submits that in connection with the aforesaid assessment proceeding although, the respondent no.2, having proposed variations in the income and having issued a show cause was bound to afford adequate opportunity to the petitioner to respond, the same had not been provided to the petitioner.

4. By drawing attention of this Court to the aforesaid show cause notice dated 15th March, 2024, it is submitted that the petitioner was afforded time till 1100 hrs. of 19th March, 2024 to respond to the same. Effectively, therefore, the petitioner only got one working day to respond to the said notice. By referring to the provisions of Section 144B(6)(vii) of the said Act it is submitted that in a case of this nature it is the obligation of the respondent no.2 to afford the assessee with an opportunity of personal hearing, in case a request is made.

5. By drawing attention of this Court to the response to the show cause notice issued under Section 142(1) of the said Act, dated 14th November, 2023, it is submitted that the petitioner had made a specific prayer for affording the petitioner with a opportunity of

hearing. Despite the above, no such opportunity of hearing was provided to the petitioner. The aforesaid constitutes not only violation of principles of natural justice but also statutory infraction which cannot be cured.

6. In such circumstances, he submits that the assessment order stands vitiated on such ground and should be set aside along with the consequential demand notice including the notice for initiation of penalty proceeding.

7. Mr. Sharma, learned advocate appearing on behalf of the respondents on the other hand by drawing attention of this Court to the show cause notice dated 15th March, 2024, which forms the subject matter of challenge in the writ petition, submits that the petitioner was given an option to request for personal hearing. The request can only be made by clicking the “Seek Video Conferencing” button available against the show cause notice in the e-proceeding tab on e-filing portal. It was categorically provided in the show-cause notice that such request for video conference can be made only before expiry of compliance date and time. The petitioner did not click such button; having not exercised her option of personal hearing, it cannot be said that there was any irregularity on the part of the

respondent no.2, in not affording the petitioner personal hearing. He then submits that in the instant case, the petitioner was given adequate opportunity to respond. In terms of the statutory provision, the determination proposal containing the proposed variations was duly forwarded to the petitioner along with the show cause notice and the same was uploaded on the e-filing portal on 15th March, 2024. Reasonable opportunity was given to the petitioner. Notwithstanding the aforesaid, the petitioner chose not to respond. The assessment order in question was passed after more than seven working days from the date of issuance of the show-cause notice and, as such, it cannot be said that there had been violation of principles of natural justice. The petitioner has an efficacious, alternative remedy in the form of an appeal, as such, this Hon'ble Court in the given facts ought not to entertain the petition of this nature.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. Although, it is the contention of the petitioner that in terms of Section 144B(6)(vii) of the said Act, the respondents ought to have afforded an opportunity of personal hearing on a request being made, I find that despite the respondents affording an opportunity to the petitioner to make a request for personal hearing by

clicking Seek Video Conferencing button available against the show cause notice in the view notices Section of the e-proceeding tab, on e-filing portal, no such button was clicked within the time specified in the notice. On this context, I am of the view that the time provided to the petitioner was adequate enough, at least, for the purpose of clicking Seek Video Conferencing button, if the petitioner was at all interested to seek personal hearing.

9. The request made by the petitioner for personal hearing in the response dated 14th November, 2023, could not have mandated the respondent no.2 to give personal hearing to the petitioner without the petitioner applying for personal hearing in the manner prescribed on the portal.

10. As correctly pointed out by Mr. Sharma, learned advocate for the respondents, that the respondent no.2 had duly afforded an opportunity of hearing to the petitioner. If the petitioner has failed to take such opportunity, the respondent no. 2 cannot be made responsible therefor. The same conclusion may not be drawn while considering whether appropriate opportunity of hearing was given to the petitioner to respond to the show cause notice dated 15th March, 2024, which proposed the variations. I find that the

show-cause notice is dated 15th March, 2024 and from the stamp on it and the digital signature it would appear that the same was signed on 15th March, 2024 at 16.46.43 hrs., which was a Friday. The petitioner was required to respond to the said show cause notice within 11 a.m. of 19th March, 2024. Therefore, the petitioner had hardly one working day's time to respond to the same.

11. From the Standard Operating Procedure (SOP) circulated by the Commissioner of Income Tax vide letter dated 3rd August, 2022, it would transpire that in terms of paragraph N.1.3, Faceless Assessment Unit is required to afford response time of 7 days from the date of issuance of show cause notice. It would also appear from the aforesaid SOP that 7 days time may be curtailed keeping in view the limitation date for completing the assessment.

12. In this case, it may be noticed that the limitation period would end on 31st March, 2025. As such, there being no urgency I find that the respondent no.2 had acted in derogation of the SOP. The opportunity to respond also does not appear to be adequate. The aforesaid, in my view, constitutes violation of principles of natural justice, inasmuch as, the petitioner was prevented from appropriately responding to the show-

cause.

13. It is true that the respondent no.2 had passed the order beyond the period of 7 days from the date of issuance of such notice, but there was nothing on record to demonstrate that any notice was given to the petitioner intimating that the order shall not be passed prior to the expiry of 7 days from the date of issuance of show-cause, for the petitioner to respond to the same. The order passed by the respondent no.2 dated 26th March, 2024 for the assessment year 2022-23 stands vitiated by reasons of violation of principles of natural justice. For reasons indicated morefully hereinabove, I set aside the order dated 26th March, 2024 and remand the matter back to the respondent no.2.

14. Since, the petitioner has already received the show cause notice, the petitioner shall be at liberty to file her response to the said show cause notice within a period of 15 days from the date of receipt of the server copy of this order.

15. The respondent no.2 is directed to forthwith activate the portal for the petitioner to submit her response and to express her option of personal hearing, if she so chooses. The factum of activation of the portal must be communicated to the petitioner by email.

16. In the event, the petitioner does not file her response within the time specified; the respondent no.2 shall be free to proceed with the matter in accordance with law.

17. As a sequel thereto, the demand dated 26th March, 2024 made under Section 156 of the said Act for the Assessment Year 2022-23 for a sum of Rs.62,04,114/- and the penalty proceeding initiated under Section 274 read with Section 272A(1)(d) of the said Act vide notice dated 26th March, 2024 for the Assessment Year 2022-23 also stand set aside.

18. With the above observations and directions, the writ petition is disposed of.

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

(Raja Basu Chowdhury, J.)