06.08.2024
Item No.
AD 4
Saswata

W.P.A. 14729 of 2024
Lake Gardens Saha Education Society
versus
The Assessment Unit, Income Tax Department, National Faceless Assessment Centre (NaFAC), New Delhi and Others

Mr. Avra Mazumder
Ms. Alisha Das

…For the petitioner

Ms. Smita Das De

…For the respondents

1. Challenging, inter alia, the assessment order dated 11th March 2024 passed under Section 143 (3) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") for the assessment year 2022-23, the present writ petition has been filed.

2. Mr. Mazumder, learned advocate appearing on behalf of the petitioner at the very outset submits that he confines his argument only to the failure on the part of the respondents to afford the petitioner with an opportunity to appropriately show cause to the proposed variations vide show-cause notice dated 1st March, 2024 for the assessment year 2022-23. He submits that ordinarily when a variation is proposed in the income or loss determination proposal, it is the obligation of the assessing officer/Faceless Assessment Unit to issue a show cause calling upon the assessee to show cause as to why the assessment should not be completed in terms of the proposal indicated therein. Such procedure is followed in accordance with Section 144B(6)(vii) of the said Act.

3. By drawing attention of this Court to the show cause notice appearing at page 132 of the writ petition, it is submitted that the assessing officer/Faceless Assessment Unit by its notice dated 1st March 2024 while proposing variations, had called upon the petitioner to show cause to the same on or before 17.00 hours on 4th March 2024. He

submits that the said period was not sufficient for the petitioner to respond.

4. By drawing attention of this Court to the Standard Operating Procedure (SOP) for the assessment unit under Faceless Assessment provisions of Section 144B of the said Act circulated by the Government of India, Ministry of Finance vide notification dated 3rd August, 2022, it is submitted that in terms of Clause N.1.3 the assessing unit is bound to follow the principles of natural justice and the assessing unit is required to offer a response time of minimum 7 days from the date of issuance of show cause unless the issue of limitation intervenes. Mr. Mazumder submits that since the petitioner was not afforded adequate opportunity, the petitioner could not respond to the show cause and the assessing unit had passed the assessment order without the petitioner's response. It is submitted that the aforesaid order should be set aside and the matter should be remanded to the Faceless Assessment Unit with further opportunity to the petitioner to file its response to the show-cause.

5. Ms. Das De, learned advocate appearing for the respondents on the other hand submits that although the show cause notice afforded opportunity to the petitioner to file its response on or before 17.00 hours of 4th March 2024, the assessment order was passed only on 11th March 2024. As such, despite having opportunity to file its response, the petitioner chose not to file its response to the assessment proposal and according to Ms. Das De the portal had been kept activated for a period of 7 days i.e. upto 6th March 2024 for the petitioner to file its response.

6. It is submitted that the order is not an ex parte order and the previous responses filed by the petitioner were duly taken into consideration by the assessing officer, as such no interference is called for.

7. Having heard the learned Advocates appearing for the respective parties and having considered the materials on record, it would transpire that elaborate procedure has been laid down for conducting a proceeding by the Faceless Assessment Unit. In terms of Section 144B (6) (vii) of the said Act, as rightly pointed out by Mr. Mazumder the Faceless Assessment Unit is obliged to in case of proposing variation in the income or loss determination proposal, to serve a notice calling upon the assessee to show cause why the assessment should not be completed as per the income or loss determination proposal. It is in relation to the aforesaid, a SOP had been circulated by the Government of India, Ministry of Finance, Central Board of Direct Taxes, National Faceless Assessment Centre, (NAFC), New Delhi dated 3rd August, 2022. The said circular may not have a statutory force but in my view, the Faceless Assessment Unit is bound to adhere to such guidelines since, the same has been issued by the Central Board of Direct Taxes. The aforesaid findings are supported by the judgment delivered by the Division Bench of this Court in the case of ***Indu Goenka v. Assessment Unit, Income Tax Department*** reported in **[2023] 149 taxmann.com 462 (Calcutta)**. In terms of Clause N.1.3 of the SOP, the Faceless Assessment Unit was required to ensure not only adherence of the principles of natural justice and to provide reasonable opportunity to the assessee but specific time lines have

been noted which are required to be followed in relation to inviting a response to a show-cause from the assessee. It would appear from Clause N.1.3.1 that the time to respond to a show- cause is seven days. Admittedly, in this case the show-cause notice did not provide minimum of seven days time to respond. The time provided to respond was less than three days. This in my view, is not only contrary to the SOP but is also violative of the principles of natural justice as three days response time may not have been reasonable.

8. Although, Ms. Das De has attempted to make out the case that the petitioner having not filed its response even within seven days, there is no irregularity on the part of the Faceless Assessing Unit to pass the assessment order since the assessment order was passed beyond the expiry of 7 days from the date of issuance of the show cause, I am afraid, I am unable to accept the same. Nothing has been placed before this Court to demonstrate that the portal remained activated even after the expiry of the period mentioned in the show-cause, there is no email communication disclosed by the respondents to demonstrate that the petitioner was notified with regard to the portal being kept activated or with regard to the *"submit response"* button on the portal being kept activated, for the petitioner to submit its response beyond the period for submission of response in terms of the show cause notice.

9. In absence of any communication, I am of the view that the petitioner could not have perceived that the portal was kept activated for the petitioner to submit its response. The same finds support from the judgment of this Court delivered in the case of ***Green Valliey Industries Ltd. V.***

Assessment Unit, Income Tax Department reported in ***[2023] 147 taxmann.com 295(Calcutta)***.

10. Having regard to the aforesaid, I am of the view that the order passed by the Faceless Assessment Unit stands vitiated on the ground of violation of principles of natural justice as also failure to comply with the SOP as noted above.

11. In view thereof, the order dated 11^{th} March 2024 passed under Section 143 (3) read with Section 144B of the said Act for the assessment year 2022-23 is set aside and the matter is remanded back to the Faceless Assessment Unit.

12. The petitioner shall be at liberty to file its response with the Faceless Assessment Unit within a period of 10 days from date. For the said purpose the Faceless Assessment Unit shall open a micro portal for the petitioner to submit its response and the factum of activation of such micro portal shall be intimated to the petitioner by email.

13. Needless to note that the Faceless Assessment Unit shall dispose of the proceedings as expeditiously as possible within a period of 8 weeks from the date of communication of this order.

14. With the above directions and observations, the writ petition being WPA 14729 of 2024 is ***disposed of***.

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

(*Raja Basu Chowdhury, J.*)