26.07.2024
Sl. No. 09.
D/L.
Mithun
Ct.No.5

WPA 15202 of 2024

Bipasa Tradelink Private Limited
Vs.
The Assessment Unit, Income Tax Department, National Faceless Assessment Centre, (NaFC) & Anr.

Mr. Avra Mazumder,
Mr. Ankit Kanodia,
Ms. Alisha Das,
Mr. Nilanjan Bhattacharya,
Ms. Elina Dey
..for the petitioner.

Mr. Aryak Dutt,
Ms. Riya Kundu
…for the respondent.

1. The present writ petition has been filed inter alia challenging an assessment order dated 17th March, 2024 passed under Section 147 read with Section 144 B of the Income Tax, 1961 (hereinafter referred to as the said Act) for the Assessment Year 2018-19.

2. It is a petitioner's case that in connection with the assessment proceeding, the Faceless Assessment Unit despite being obliged to in terms of Section 144 B (6)(VII) of the said act to make available in case where a variation is proposed in the income or loss determination proposal, a notice calling upon the assessee to show-cause as to why the assessment

should not be completed in terms of the proposal indicated therein, no appropriate opportunity was given to the petitioner to respond to the said notice.

3. Mr. Mazumder, learned Advocate representing the petitioner by drawing attention of this Court to the show-cause notice dated 6th of March, 2024 for the Assessment Year 2018-19 submits that notwithstanding the respondents having intimated the petitioner as regards the variations proposed, by serving the petitioner a show-cause, the petitioner was only offered an opportunity to respond to the show-cause on or before 17.00 hrs. of 9th of March, 2024. This, according to Mazumder does not constitute adequate opportunity to respond. According to him, the Proper Officer had acted contrary to the departmental guidelines published and circulated in the form of Standard Operating Procedure (SOP) for Assessment Unit under Faceless Assessment Provisions of Section 144B of the said Act, vide notice dated 3rd August, 2022. By drawing attention of this Court to Clause N.1.3 of the aforesaid guidelines, it is submitted that the Faceless Assessment Unit was obliged to permit the petitioner a minimum of 7 days response time to respond to the show-cause. Admittedly, in this case there has been breach of the aforesaid SOP.

4. It is submitted that the petitioner though belatedly had filed its response to the show cause on 17th March, 2024 at around 17.15 p.m. Unfortunately, since by the time the response was to be submitted, the Submit Response Button on the portal had been deactivated, the petitioner was compelled to file such response with the Income Tax Grievances Help Desk. Factum of submission of such response would corroborate from the copy of the acknowledgment of the grievance lodged, which has been annexed to the petition.

5. By referring to the assessment order dated 17th March, 2024 it is submitted the Faceless Assessing Unit by ignoring the response filed by the petitioner and by treating the assessee having not filed any response to the show-cause had passed the said order. According to Mr. Mazumder, the aforesaid constitutes violation of principle of natural justice apart from violation of statutory provisions and the SOP. In the facts as noted above, he submits that this Court may set aside the order of assessment and remand the matter back to the Faceless Assessment Unit.

6. Mr. Dutt, learned Advocate appearing on behalf of the respondents submits that in the instant case, due opportunity was provided to the assessee to

respond. The assessee did not respond within the time specified. Even the assessee did not respond within a period of seven days from the date of issuance of notice. Having regard to the aforesaid, the assessee cannot be permitted to fall back on the SOP to, *inter alia,* contend that the order of assessment is bad. He submits that admittedly the response filed by the petitioner is with the Income Tax Grievance Help Desk (Grievance Cell) and the Faceless Assessment Unit has no independent access to the same.

7. Having regarding to the above, it is submitted that the Faceless Assessment Unit cannot be faulted for not considering the response purportedly filed by the petitioner.

8. 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 a proceeding by the Faceless Assessment Unit. In terms of Section 144B (6) (vii) 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 & Ors.*** reported in **2023(3)TMI 1164 – Calcutta High Court.** 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. This apart, the petitioner did file a response.

10. Although, Mr. Dutta, learned Advocate appearing on behalf of the respondents 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 Assessment Unit to pass the assessment order since, the assessment order was passed beyond the expiry of seven days from the date of issuance of the show-cause, I am afraid and I am unable to accept the same. It is not in dispute that the *Submit Response Button* on the portal, for submission of response to the show-cause was deactivated on the expiry of the period for filing of the response. This prompted the petitioner to file the response with the Help Desk Grievance Cell. Although, the Faceless Assessment Unit may not have an opportunity to go through the response filed by the petitioner but 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 17th of March, 2024 passed under Section 147 read with Section 144B of the said Act for the Assessment Year 2018-19 is set aside. The matter is remanded back to the Faceless Assessment Unit. Since, the response filed by the petitioner is already on record, the Faceless Assessment Unit is directed to take note of such response and to dispose of the proceeding in accordance with law as expeditiously as possible preferably within a period of 8 weeks from the date of communication of this order.

12. With the above observations and directions, the writ petition stands disposed of without any order as to costs.

(Raja Basu Chowdhury, J.)