Form No. J.(2)
Item No.6

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 09.04.2024

DELIVERED ON: 09.04.2024

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. 19 of 2024
With
I.A. No. CAN 1 of 2023
Expandable Enterprises Private Limited
Vs.
Income Tax Officer, Ward 9(1), Kolkata & Ors.

Appearance:-
Mr. Avra Majumder
Mr. Ramesh Kumar Patodia
Ms. Megha Agarwal

.........for the Appellant

Mr. Vipul Kundalia
Mr. Amit Sharma

.........for the Respondents

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioner is directed against the order dated 8th June, 2023. In the said writ petition, the appellant had challenged the order passed under Section 148A(d) of the Income Tax Act, 1961 (for brevity, "the Act") dated 12th April, 2023 for the assessment year 2019-2020 on the ground that the requisite approval under Section 151 of the Act was not obtained with particular reference to the alleged bogus sales to the tune of Rs.22.63 lakhs.

2. The learned Single Bench has dismissed the writ petition and aggrieved by the same, the present appeal was filed.

3. When the appeal was heard on 20th February, 2024, this Court passed the following order:-

> *"1. We have heard the learned advocate for the appellant. The respondent department is directed to give written instruction to the learned standing counsel for the Income Tax Department as to whether the sum of Rs.22.63 lacs alleged to be bogus sale was forming part of the information placed before the Commissioner of Income Tax while obtaining approval under Section 151 of the Income Tax Act, 1961 dated 12.04.2023.*
>
> *2. The case of the appellant is that while obtaining an approval as could be seen from the annexure to the order of approval dated 12.04.2023 the information was only under four heads and the allegation of bogus sale to the tune of Rs.22.63 lacs did not form part of the said information. However, this finds place in the show cause notice. Therefore, it is submitted that initiation of reopening proceeding in respect of this amount on the alleged ground of bogus sale is without jurisdiction as the specified authority has not granted any approval.*
>
> *3. Let such written instruction be given to the learned standing counsel within two weeks from date.*
>
> *4. List the matter on 12th March, 2024."*

4. Thereafter, the matter was adjourned twice to enable the learned advocate appearing for the respondent/Department to get specific written instruction. Today, when the matter is taken up, the ITO, Ward 9(1), Kolkata has given a specific written instruction dated 8th April, 2024. On perusal of the instruction, it is prima facie seen that while seeking for approval of the competent authority, the total value was mentioned as Rs.1407.22 lakhs, which includes the alleged bogus sales of Rs.22.63 lakhs.

5. Further a statement has been made that so far as the question of the amount mentioned in the approval under Section 151 and the annexures to

it is concerned, it is submitted that due to some technical problem, the draft proposal details, which were submitted earlier, and appearing as annexure to the approval under Section 151 of the Act could not be updated and, therefore, the approval and the annexure to it showing the value of Rs.1384.59 lakhs, whereas the order under Section 148A(d) in para 6.1 is correctly showing the amount i.e. bogus sale of Rs.22.63 lakhs, based on which the case has been reopened and the same has been approved by the specified authority after perusing the draft order to be passed under Section 148A(d) of the Act.

6. Thus, in the light of the above, we are of the view that there are serious disputed questions of fact, which cannot be adjudicated in a writ petition and therefore, the appropriate course to be adopted by the petitioner is to face the reopening proceeding in which all grounds including the grounds, which were canvassed before this Court in the present appeal shall be raised.

7. With the above observations, appeal and the connected application (I.A. No. CAN 1 of 2023) stand disposed of.

8. No costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)