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20.11.2024

WPA 18601 of 2024

Jagarnath Consultants Private Limited
Vs.
The Income Tax Officer, Ward 1(1), Kolkata & Ors.

Mr. Soumitra Chowdhury
Mr. Avra Mazumder
Ms. A. Das
Mr. S. Bhowmik
Mr. S. Das
Ms. E. Dey
Mr. S.N. Banerjee

… … for the petitioner

Mr. Amit Sharma

… … for the respondents

Learned counsel appearing for the petitioner submits that the petitioner has updated its email ID in the Income Tax Portal, which is trans10802@yahoo.co.in on 21st September, 2014 after updation of the email ID. A notice under Section 148 of the Income Tax Act was issued to the petitioner for the assessment year 2017-18 in petitioner's earlier email and as such the petitioner could not receive the email, owing to which could not respond to the notice under Section 148 of the Income Tax Act. Therefore, the petitioner prays for quashing of the notice dated 29th June, 2021.

It has been further submitted by the learned counsel appearing for the petitioner that it is a well-settled trite under the law of taxation that issuance of a proper notice is a prerequisite for conducting a valid assessment. In other words, if the notice is not complete in all aspects such as non-adherence to the time limits prescribed, the same may vitiate an entire proceeding.

Learned counsel appearing for the Income Tax department on written instructions submits that because of an inadvertent mistake, the notice was issued to the earlier email address of the petitioner but order passed under Section 148A(d) on 7th July, 2022 was a speaking order and as such the assessment order should not be cancelled and there is also an alternative remedy by way of an appeal by which the petitioner can agitate the assessment order.

Written instructions filed by the learned counsel appearing for the Income Tax department is kept with the record.

Heard learned counsel for both parties at length.

The assessment order cannot be completed without issuance of a notice under Section 148. As such the assessment order passed by the Assessing Officer without issuing proper notice under Section 148 of the Income Tax Act, the assessment proceedings as well as the assessment order passed by the Assessing Officer is bad in law and is set aside.

In Sanatan Dharm Mahaveer Dal Vs CIT reported in 252 ITR 46 the Hon'ble Rajasthan High Court observed that any proceeding culminating in violation of principles of natural justice deserves to be set aside as contra-legem. In the present case, without offering any comment on the merits of the case, this Court deems it fit to remand the matter to the file of the Assessing Officer with a direction to accord a reasonable opportunity to the petitioner by serving notice/s on such registered email-id.

However, this order does not preclude the Assessing Officer to take steps in accordance with the law and as the Rules provide.

Accordingly, the writ petition being WPA 18601 of 2024 is disposed of.

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

(Rajarshi Bharadwaj, J.)