09.01.2024
Item No.04
RP/KC
Ct. No.1

MAT 1689 of 2023
+
IA No.CAN 1 of 2023, CAN 2 of 2023

Damodar Ispat Ltd.
Vs.
Dy. Commissioner of Income Tax, Central Circle 2(4) & Ors.

Mr. Kapil Goel
Mr. Avra Mazjumder
Mr. Suman Bhowmik
Mr. Kausheyo Roy
Mr. Samrat Das
Ms. Elina Dey
.....for the Appellant

Ms. Smita Das De
.....for the Respondents

1. Upon perusal of the averments made in the application for condonation of delay, we are satisfied that sufficient grounds have been made to condone the delay. Hence, the application, being CAN 2 of 2023, is allowed.
2. This intra-Court appeal is directed against the order dated 7th June, 2023 passed in WPA 10073 of 2023. The said writ petition was filed for two reliefs, namely, challenging the assessment order dated 31.03.2023 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") read with Section 147 thereof and the order of transfer of appellant's assessment file passed under Section 127 of the said Act. Before

the learned writ Court the appellant did not challenge the order of transfer of assessment file. Therefore, the appellant is precluded from raising such ground in this appeal. Hence, the order of transfer passed under Section 127 of the said Act is sustained.

3. The challenge to the assessment order is on the ground of violation of principles of natural justice. As could be seen from the assessment order the assessing officer has relied upon certain third parties' statement and admittedly copies of those statement were not furnished to the assessee. The assessee while replying to the show cause notice dated 10.02.2023 made a specific request for providing copies of those statements. The assessee also relied on various decision to support its case that if any adverse material based upon the third parties' information is relied on it is entitled to furnish copies of those statements as also entitled to cross-examine those persons, who were deposed against its interest. The assessing officer does not dealt with the aspect regarding furnishing of the copies of the statements as sought for by the assessee. With regard to the prayer for cross-examination the assessing officer opines that if the parties, who have given evidence, are to be assured confidentiality, the question of cross-examination

would not arise. This observation is incorrect since the statements given by the third parties have been referred to and relied upon by the assessing officer to implicate the appellant/assessee and if that be so, there is no breach of any confidentiality and the assessee is entitled to get copies of such statement and also seek for cross-examination of those persons who had given statements. However, at this juncture we do not propose to decide that issue and leave it to the assessing officer to take a decision on the ground of cross-examination but, however, copies of the statements which have been relied on by the assessing officer have to be furnished to the assessee.

4. Mrs. De, learned senior counsel for the respondents would vehemently contend that after the third parties' information was obtained by the department, it was made known to the assessee and they were also given an opportunity of rebut the evidence. The fact remains that the statements have not been shared with the appellant/assessee and mere furnishing of information gathered by the department from such third parties, whose statements have been recorded on oath. Hence, we are satisfied that there is violation of principles of natural justice.

5. For the above reasons, we hold that the assessment order impugned in the writ petition suffers from violation of natural justice. In the result, the appeal and the application are allowed and the order passed in the writ petition is set aside. The assessment order dated 31st march, 2023 is set aside and the matter is remanded to the assessing officer for a fresh decision. The assessing officer is directed to furnish copies of the statements, which have been referred to and relied upon by the assessing officer, within fifteen days from the date of receipt of the server copy of this order to the appellant/assessee after which appellant/assessee will be entitled to put forth its objection and in the objection the appellant is entitled to seek for cross-examination of those third parties. If such request is made, the assessing officer shall take an appropriate decision in accordance with law with regard to cross-examination and thereafter proceed to decide the matter afresh.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)