Form No. J.(2)
Item No.5

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

HEARD ON: 27.02.2024
DELIVERED ON: 27.02.2024

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

F.M.A. 43 of 2024
With
I.A. No. CAN 1 of 2024

Ravindra Parasramka
Versus
The Union of India & Anr.

Appearance:-
Mr. Prashanat Agarwal ....**for the appellant**

Mr. Vipul Kundalia
Ms. Uneza Ali ....**for the Income Tax Authority**

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 9th June, 2023 in W.P.A. 11090 of 2023. In the said writ petition, the appellant had challenged an order passed by the assessing officer under Section 148A(d) of the Income Tax Act, 1961 on the ground that it has been passed without any application of mind, without considering the response given by the assessee to the notice issued under Section 148A(a) dated 3rd March, 2023 and the response given by the assessee to the notice dated 14th March, 2023 under Section 148A(b) of the Act.

2. The assessee was issued notice under Section 148A(a) dated 3rd March, 2023 stating that for the relevant assessment year i.e.2016-2017, it has been noticed that the assessee had financial activities/transactions viz. (1) purchased immovable property valued at Rs.140.00 lakhs, (2) sale of equity shares (settled by the actual delivery or transfer) in a recognised stock exchange valued at Rs.19,000/-. The assessee was directed to furnish its reply.

3. The assessee submitted their reply dated 13th March, 2023 categorically stating that the information that the purchase price of immovable property for Rs.140.00 lakhs is incorrect and the property was purchased for Rs.70 lakhs only, which was purchased in the joint names of the assessee and his spouse and there was no difference in stamp duty value and actual consideration and the total consideration paid and how the funds were raised were mentioned in the reply. The copy of the registered sale deed was attached to the reply and the assessee also sought for information and details of Rs.140.00 lakhs as per the records of the department so that to further clarify the matter.

4. Further, the assessee also explained the fund flow and mentioned as to how they were obtained from past savings, out of sale proceeds of a property sold on 9th January, 2015, gift from the mother of the assessee and gift from the father of the assessee and also sale of equity shares of Rs.19,000/-.

5. Further, it was stated that since there was no taxable income during the year, no return was filed. The assessee requested the assessing officer to drop the proceedings. However, without taking note of the explanation

offered, mechanically the assessing officer issued notice under Section 148A(b) with the same allegations as contained in the notice issued under Section 148A(a) of the Act. This error committed by the assessing officer goes to the root of the matter and it is said that it cannot be rectified in a subsequent proceeding. We say so because the purpose for conducting an enquiry and by issuance of notice under Section 148A(a) of the Act is to afford an opportunity to the assessee to place documents and submit their explanation. Therefore, the assessing officer was bound to examine the explanation and the documents, which are produced and if he decides to proceed to issue notice under Section 148A(b) of the Act, the said notice should deal with the explanation offered by the assessee. This is conspicuously absent in the notice dated 14th March, 2023, which would vitiate the entire proceedings.

6. Be that as it may, the assessee submitted a reply on 18th March, 2023, which apart from reiterating what was said earlier has also given the full facts. It was also pointed out that though the assessee had sought for details with regard to the purchase of immovable property for Rs.140.00 lakhs and that information was yet to be provided to the assessee. Even, at that stage, the assessing officer could have provided the necessary information, provided him an opportunity of hearing to the assessee and dealt with the matter. Nonetheless, the assessing officer proceeded to pass the order dated 5th April, 2023 under Section 148A(d) of the Act.

7. On going through the order, we find that in paragraph 5, the assessing officer has in verbatim reproduced the explanation offered by the assessee. However, in the discussion portion, the same has not been dealt with.

8. The assessee's specific case is that the property was purchased for Rs.70 lakhs and it was purchased in the joint name of the assessee and his spouse and there is no difference in the stamp duty value and actual consideration. The fund flow statement has also been given, which has not been rebutted or disputed by the assessing officer.

9. Thus, we find that the entire proceeding is vitiated and it is a clear case of total non-application of mind, non-consideration of the facts and issue and therefore, there is no justifiable reason to reopen the assessment in the case on hand.

10. For the above reasons, the appeal and the connected application are allowed. The order passed in the writ petition is set aside. Consequently, the writ petition is allowed and the order passed under Section 148A(d) of the Act and consequential notice issued under Section 148 are quashed.

11. No costs.

12. 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.)