OD-1

ORDER SHEET

WPO/344/2024

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SUNAINA CHATTERJEE
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE KAUSIK CHANDA
Date : 23rd April, 2024

Appearance:
Mr. Anirban Ray, Adv.
Mr. Soumabho Ghose, Adv.
Ms. Shreya Basu Mallick, Adv.
Ms. Swati Dalmia, Adv.
Mr. Ankit Dey, Adv.
Ms. Sabarnil Mukherjee, Adv.
..for the petitioner

Mr. Soumen Bhattacharjee, Adv.
..for Income Tax Department

The Court: The petitioner/assessee challenges the assessment order dated March 28, 2024 whereby its income was assessed at Rs.6,35,38,297/- for the assessment year 2018-19. The assessee was also served with a demand notice under Section 156 of the Income Tax Act, 1961 demanding a sum of Rs.10,44,65,642/- for the said assessment year.

The assessee argues that the partnership firm namely, Incentives and Conference Planners was converted into a Limited Liability Partnership Firm on and from 5th April, 2017 with a different PAN number. The said Limited Liability Partnership Firm had filed its return for the assessment year 2018-19 before the Revenue .

Without taking into consideration the filing of return by the Limited Liability Partnership Firm, the impugned assessment has been made in the name of the earlier unregistered partnership firm.

The Revenue, on the other hand, suggests that the earlier partnership firm did not surrender its PAN number. Therefore, it is apparent that the said firm is also running its business without surrendering its PAN number.

The Revenue further submits that there is an alternative remedy of appeal and therefore, this writ petition should not be entertained. It has been further submitted that in the event this Court entertains this writ petition, an opportunity for filing affidavit should be granted to the Revenue.

Having regard to the nature of disputes involved in this writ petition, I am not inclined to keep this matter pending.

It appears that a notice under Section 148A of the Income Tax Act, 1961 was issued against Incentives and Conference Planners for the assessment year 2018-19 against PAN number AADF10250P.

In response to that notice, the petitioner by a letter dated 31st March, 2022 prayed for an adjournment of 30 days to furnish a reply to the said notice.

In the said letter, the assessee indicated that the said partnership firm had been converted into Limited Liability Partnership with PAN number AAGF13731A.

A second notice dated April 5, 2022 under Section 148A of the Income Tax Act, 1961 was issued. A reply to the said show-cause notice was given by the petitioner by a letter dated June 30, 2023. Thereafter, the impugned assessment order dated 28th March, 2024 and the notice of demand dated 28th March, 2024 were served upon the petitioner.

The assessment order suggests that it was made ex parte.

A bare perusal of the assessment order does not reflect that the Assessing Officer took into consideration the stand of the petitioner that after its conversion into a Limited Liability Partnership Firm, the firm had filed its return for the assessment year 2018-19.

In my view, to ensure compliance with the natural justice, the petitioner should be afforded an opportunity of personal hearing by the Assessing Officer to take into consideration all the relevant factors as contended by the petitioner before this Court. Accordingly, I set aside the impugned assessment order dated 28th March, 2024 and the notice of demand under Section 156 of the Income Tax Act, 1961. The Assessing Officer shall give an opportunity of hearing to the petitioner within a period of three weeks from date. The petitioner will be at liberty to produce all the documents before the Assessing Officer. The Assessing Officer after hearing the petitioner shall take appropriate decision in accordance with law within one week thereafter.

WPO/344/2024 is accordingly disposed of.

(KAUSIK CHANDA, J.)

bp.