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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

APO/62/2024
IA NO: GA/1/2024
NITIN AGARWAL
VS.
INCOME TAX OFFICER, WARD 46(1), KOLKATA

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 21st June, 2024

Appearance :
Ms. Sutapa Roy Choudhury, Adv.
Mr.Abhijat Das, Adv.
Ms. Aratrika Roy, Adv.
…for the appellant.

Mr. Prithu Dudheria, Adv.
…for the respondent.

The Court : This intra-Court appeal filed by the writ petitioner is directed against the order dated 20th March, 2024 by which the writ petition filed by the appellant challenging the order under Section 148A(d) of the Income Tax Act, 1961 dated 29th December, 2023 was dismissed and the appellant was relegated to avail the remedies available under the Act. This is the second round of litigation. The appellant had challenged the order under Section 148A(d) of the Act dated 13th April, 2023 on several grounds including the ground that the documents sought for by the appellant were not furnished and there has been violation of principles of natural justice. The writ petition which was filed challenging the said order in WPO/118/2024 was disposed of granting liberty to the appellant to produce the relevant documents. Not being satisfied with the direction, the appellant preferred an intra-Court appeal in APO/79/2023. The said appeal was disposed of by judgment dated 13th October, 2023. The operative portion of the order reads as under :-

> *"Once again, the assessee sought for the relevant documents and liberty to file an additional objection. The reply given by the assessee on 12.4.23 has not been taken into account in the manner it should have been done, though the assessing officer refers to the said reply in pages 3 and 4 of the order dated 13.4.23. As pointed out earlier, the notice dated 27.3.23 is not a notice of personal hearing. Therefore, the authority while passing the order impugned in the writ petition has violated the principles of natural justice and inasmuch as the statute also provided that opportunity be granted to the assessee before an assessment is reopened. Therefore, we are satisfied that there has been violation of principles of natural justice and, therefore, the assessee has to be provided an opportunity of personal hearing and also be given*

> *liberty to furnish additional documents to support their stand. For the above reasons, the order impugned in the writ petition dated 13.4.23 passed under section 148A(d) of the Act is directed to be treated as a notice under Section 148A(b) of the Act and assessee be directed to file further objection along with supportive documents and on receipt of the further objection and supportive documents, the assessing officer is directed to fix a date for personal hearing to hear the authorized representative of the assessee and pass fresh orders on merits and in accordance with law. The assessee is directed to file their reply within a period of 30(thirty) days from the date of receipt of the server copy of this order.*
>
> *During the course of personal hearing, the petitioner may make a request for supply of any additional document that may be relied upon by the department.*
>
> *The appeal is allowed with the above observations."*

Pursuant to the above order, the matter was once again taken up for de novo consideration and notices were issued to the appellant and the appellant has produced certain documents and ultimately, the order dated 29th December, 2023 was passed which was impugned in the writ petition which the learned Single Bench has declined to interfere. The learned advocate appearing for the appellant would strenuously contend that the order passed under Section 148A(d) dated 29th December, 2023 was devoid of reasons. In support of her contentions reliance was placed in the decision of Vijay Steel Traders Vs. Assistant Commissioner of Income-tax, Circle 7 reported at [2024] 161 taxmann.com 87 (Bombay).

We have heard the submission of Mr. Prithu Dudheria, learned senior standing counsel appearing for the respondent/revenue. As could be seen from the order dated 29th December, 2023 passed under Section 148A(d) the assessing officer has given certain reasons as to why in his opinion the assesses has failed to establish identity, genuineness and creditworthiness of the concerned party and that the assessee has failed to discharge his primary onus and even the third party did not respond to the notices issued and, therefore, come to the conclusion that it is a fit case where notice under Section 148 has to be issued. Thus, the question would be as to whether the assessee based on the documents which were produced have been able to substantiate the identity, genuineness and creditworthiness of the third party. The writ court cannot go into the veracity of those documents to make a fact finding exercise as to whether the documents would in effect prove the three factors. This requires deeper factual examination which cannot be done in a writ petition. Therefore, the learned Single Bench was perfectly justified in not interfering with the order and relegating the appellant to avail the remedy under the provisions of the Act.

For the above reasons, we find no grounds have been made out to interfere with the order. The appeal fails and the same is dismissed. The connected application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das
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