

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

WPO NO.363 OF 2024

**SUHAG OVERSEAS TRADING PVT. LTD.
VERSUS
UNION OF INDIA & ORS.**

For the petitioner : Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Ms. Sretapa Sinha, Adv.
Mr. Kausheyo Roy, Adv.
Ms. Sruti Datta, Adv.

For the respondents : Mr. Aryak Dutt, Adv.
Ms. Riya Kundu, Adv.

Heard on : 10.07.2024

Judgment on : 10th July, 2024.

RAJA BASU CHOWDHURY, J:

1. The present writ petition has been filed, inter alia, for declaration that the reassessment proceeding including the notices dated 25th March, 2022, 31st March, 2022, the order dated 29th April, 2022, the notice dated 29th April, 2022 and the order dated 22nd March, 2024 are arbitrary, without jurisdiction and should be recalled and set aside.
2. The petitioner's case proceeds on the premise that on or about 25th March, 2022, the petitioner was served with a notice under Section 148A(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the

said Act') in respect of the assessment year 2018-2019. The same was duly responded to by the petitioner by a communication in writing dated 26th March, 2022. Incidentally, without considering the said reply, another notice under Section 148A(b) of the said Act was issued on 31st March, 2022 in respect of the assessment year 2018-2019. The petitioner had once again responded to the said notice by reiterating its stand taken in the response dated 26th March, 2022.

3. Record would reveal that the said show cause was disposed of by passing an order dated 29th April, 2022 issued under Section 148A(d) for the assessment year 2018-2019, inter alia, by observing that it was a fit case for issuance of notice under 148 of the said Act in respect of the assessment year 2018-2019. Following the same and consequent upon issuance of a notice under Section 148 of the said Act, the petitioner was served with notice under Section 143(2) read with Section 147 of the said Act. The petitioner duly responded to the said notice. The same was followed by a further notice under Section 142(1) dated 12th April, 2023.
4. The petitioner had also duly responded to the same by communication dated 4th May, 2023. Particulars of the explanation provided by the petitioner would corroborate from the said response. The same was followed up by a further detailed response dated 4th September, 2023 appearing at page 97/98 of the writ petition. Subsequently a show cause notice was issued on 9th March, 2024 in respect of the assessment year 2018-19, indicating the proposed

variations. The petitioner was called upon to respond to the same on or before 14th March, 2024.

5. The petitioner did not respond to the same within the time specified. However, before the final assessment order was passed, on 15th March, 2024, the petitioner sought for an adjournment and requested the Assessing Officer/Faceless Assessment Unit to permit the petitioner additional time till 22nd March, 2024. According to the petitioner, the petitioner had duly filed its response on 22nd March, 2024. However, the Assessing Officer/ Faceless Assessment Unit without considering such response had passed the assessment order thereby, adding back Rs. 15 crores as unexplained cash credit under Section 68 of the said Act.
6. Assailing, inter alia, the said order, the present petition has been filed.
7. Mr. Majumdar, learned senior advocate representing the petitioner by drawing attention of this Court to the notice dated 25th March, 2022 issued under Section 148A(b) of the said Act submits that the Assessing Officer did not dispose of the said show cause notice despite the fact that the petitioner had responded to the same. He submits that without disposing of such notice, a rectified notice dated 31st March, 2022 was issued. He submits that the petitioner had duly responded to the same and had reiterated its stand taken in its response dated 26th March, 2022. Unfortunately, the Assessing Officer without taking note of the petitioner's response by passing a

cryptic order had decided the issue by declaring that the same was a fit case for issuing of a notice under Section 148 of the said Act.

8. By drawing attention of this Court to the notice issued under Section 143(2) read with Section 147 of the said Act dated 11th April, 2023 it is submitted that the order under Section 148A(d) of the said order dated 29th April, 2022 forms the basis for issuance of the above notice. Incidentally, despite the fact that the petitioner had responded to the same and offered detailed explanations as noted hereinabove by issuance of a show cause notice dated 9th March, 2024, the Assessing Officer had proposed to enlarge the scope of the show cause on the basis of the response filed by the petitioner.
9. According to him, the petitioner immediately could not respond to the same and by reasons as aforesaid had sought for an adjournment till 22nd March, 2024. He contends that although, the petitioner had responded to the said show cause and offered appropriate explanation, the Assessing Officer/Faceless Assessment Unit by an order dated 22nd March, 2024 had disposed of the said proceedings by ignoring the response.
10. The aforesaid, according to Mr. Majumdar, constitutes violation of principles of natural justice. By placing two unreported judgments delivered by a co-ordinate Bench of this Court in the case of ***M/s. Himadri Speciality Chemical Ltd. v. Union of India & Ors.***, in **WPO 1819 of 2022** dated 18th April, 2022 and ***Piyush Keyal v. Union of India & Ors.***, in **WPO 2048 of 2022** dated 10th May, 2022, he submits that it was the obligation of the Assessing Officer to

dispose of the adjournment petition. Without disposing of the adjournment petition, the Assessing Officer ought not to have passed the assessment order. On the same point, he also relies upon a judgment delivered by the Hon'ble High Court of Madras in the case of ***Tvl. Vikranth Construction v. Deputy Commercial Tax Officer (CT), Cuddalore***, reported in **2017 SCC OnLine Mad 37628**.

11. By drawing attention of this Court to the assessment order, it is submitted that the Assessing Officer/Faceless Assessment Unit in the given facts ought to have given adequate opportunity to respond and ought not to have disposed of the said proceedings without considering the petitioner's response, inasmuch as there was variation in the notice dated 11th April, 2023 issued under Section 143(2) of the said Act, and the proposed variation indicated in the show cause notice dated 9th March, 2024. Having regard to the aforesaid, it is submitted that this Hon'ble Court may be pleased to set aside the assessment order, remand back the same to the Assessing Officer for the Assessing Officer to take note of the response filed by the petitioner and to dispose of the same on merits.
12. Mr. Dutt, learned advocate appearing on behalf of the respondents, on the other hand, has opposed this petition and submitted that the petitioner was provided with ample opportunity to respond. It is submitted that the petitioner chose not to file any response despite being afforded with adequate opportunity. In fact, the Assessing Officer/Faceless Assessing Unit had only passed the assessment order on 22nd March, 2024. It is submitted that the petitioner was

permitted time till 14th March, 2024 to respond to the show-cause. The petitioner did not apply for any extension during the period originally provided for and hence, there was no irregularity on the part of the Assessing Officer/Faceless Assessment Unit to dispose of the assessment proceeding by passing an order dated 22nd March, 2024. He submits that there is an alternative remedy in the form of an appeal and this Hon'ble Court in exercise of its extraordinary writ jurisdiction ought not to entertain the present writ petition.

13. Heard learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case notice under Section 148A(b) of the said Act was issued on 25th March, 2022 in respect of the assessment year 2018-19. The petitioner had duly responded to the same. The said proceedings did not reach its finality. On the contrary by a rectification notice dated 31st March, 2022 in respect of the self-same assessment year, the petitioner was called upon to respond. In response to the same the petitioner had reiterated its earlier stand.

14. Record reveals that on the basis of the materials on record, the Assessing Officer by order dated 29th April, 2022 passed under Section 148A(d) of the said Act, had decided that this was a fit case for issuance of notice under Section 148 of the said Act, for income escaping assessment amounting to Rs. 6,08,02,025/-.

15. Pursuant to and in terms of the aforesaid, a notice under Section 148 of the said Act was issued. Subsequent thereto, on 11th April, 2023, the petitioner was served with a notice issued under Section

143(2) read with Section 147 of the said Act for the same assessment year 2018-19. As pointed out by Mr. Majumdar, it may be noted that the basis of such notice appears to be the order passed under Section 148A(d) of the said Act dated 29th April, 2022 and the petitioner was called upon to provide explanation thereto. The same was followed up by a further notice issued under Section 142(1) of the said Act dated 12th April, 2023 calling upon the petitioner to furnish the following clarification/information :

“The following accounts or documents or information is/are sought under section 142(1) of the Income-tax Act, 1961:

*As per the information available in Insight Portal, **Suhag Overseas Trading Private Ltd [AAACS9250P]** for the FY 2017-18, relevant to the AY 2018-19, it is seen that the assessee during the financial year 2017-18, the assessee has made fictitious lossess through equity/derivaties trading with namely JM Financial Asset Management Limited and others. The said information in possession of the department including dissemination note/final report on investigation which has been perused and found to be credible.*

In view of the facts mentioned within the meaning of Sec. 147 of the I.T Act as communicated to you vide Order u/s 148A(d) dated 29/04/2022. Further, you are requested to submit the details or clarification, as regards to the following points for the year under consideration:

- 1. Brief note on the source of income of the assessee and detail of business activities carried out during the year under consideration and method of accounting followed during the year under consideration. In case of deviation in method of accounting, please mention and give a note on it.*
- 2. Please furnish Computation of Income, copy of final accounts comprising of Trading and Profit and Loss account, Balance-*

Sheet, Audit Report including all schedule and annexure, Tax Audit Report/Form 3CD etc. for the year under consideration.

3. With respect to order under clause (d) of section 148A of the Income-tax Act, 1961 passed for the year under consideration, you are requested to submit complete details and explain with documentary evidence of all transactions mentioned in the said order:-

“During the financial year 2017-18, the assessee has made fictitious lossess through equity/derivaties trading with namely JM Financial Asset Management Limited and others”

You are requested to submit documentary evidences towards the genuineness of the transactions.

4. Please provide all bank accounts details held by assessee’s business firm in given format (Including the accounts closed during the year under consideration:

Sr. No.	Name of the bank and Branch	Account number	IFSC	Type of A/C (SB/CA/OD/others)	Interest accrued or received as on year ending 31 st March	Held in name of/belongs to

5. Also submit bank account statements with narrations of all bank accounts held the year under consideration.

6. Please furnish details of all investments as no 31st March of the year under consideration along with name of Parties, PAN, address and Email ID of receiver.”

16. The petitioner appears to have responded to the same by response dated 4th May, 2023. The petitioner also claims that an additional response was filed on 4th September, 2023 though, the same is not reflected in the subsequent show-cause notice. On the basis of the response filed by the petitioner, it appears that the Assessing Officer had issued a show cause notice dated 9th March, 2023

indicting the proposed variations and the petitioner was called upon to show cause on the following grounds.

“2.4.9 In view of the above, you are being show caused on the following two grounds of addition:

“1. On perusal of financial statements, it is seen that the assessee had received dividend of Rs. 6,08,02,025/-. It is noticed that the said dividend is not the profit on the investment, but it is received out of the capital of Rs. 15,00,00,000/- invested towards purchase of units of Mutual Fund. Under these circumstances, you are show caused as to why the transactions made with M/s JM Financial Asset Management Limited should not be treated as sham transactions and consequently, exemption claimed u/s 10(35) of the Income Tax Act, 1961 amounting to Rs. 6,08,02,025/- should not be disallowed and added back to your income for the AY 2018-19.

2. On perusal of financial statements, it is seen that the assessee had incurred losses from sale of units of JM balance fund annual dividend options Mutual Fund. The amount of loss from sale of units was Rs. 6,21,39,146/- (Rs. 15,00,00,000 - Rs. 8,78,60,854/-). In the detailed investigation carried out by the Investigation Wing of Income Tax Department, it has been accepted by the concerned Asset Management Company viz., M/s JM Financial Asset Management Limited that due procedures and rules laid down by SEBI have not been followed in letter and spirit which means that the transactions related to purchase and sale of the Mutual Fund Units are sham transactions. Under the circumstances you are show caused as to why the transactions made with M/s JM Financial Asset Management Limited should not be treated as sham transactions and consequently, the short term loss of Rs.

6,21,39,146/- should not be disallowed and the amount received back from the sale of Mutual Fund Units ie., Rs. 8,78,60,854/- should be added back to your income for the AY 2018-19.”

17. In the aforesaid show-cause, it was categorically recorded that the assessee had failed to provide the details as called for in the notice issued under Section 142(1) of the said Act. Such response was required to be submitted by the petitioner on or before 11:00 hours of 14th March, 2024. The petitioner did not respond within the time specified. Subsequently on 15th March, 2024 before the assessment order was passed the petitioner had applied for additional time to file its response. It is noticed that the assessment order was passed on 22nd March, 2024 by recording that the that the assessee had remained non-responsive to the show cause notice dated 9th March, 2024 and although, the assessee had sought for an adjournment, however, no response having been received, the said order was passed. From the date stamp appearing on the digital signature it would appear that the said order was digitally signed on 22nd March, 2024 at around 15:07:13 Indian Standard Time.
18. I find that the petitioner contends that Assessing Officer/Faceless Assessment Unit ought not to have passed the assessment order without disposing of the petitioner's application for adjournment. In support of its contention, three judicial pronouncements have been relied on. In case of ***M/s. Himadri Speciality Chemical Ltd.*** (supra) it is noticed that the assessee was required to give its response by 27th January, 2022 and despite the assessee applying for

adjournment on 27th January, 2022 such adjournment petition was not considered. Although, the adjournment petition was filed within time, without disposing of such petition the assessment order was passed on 28th February, 2022. It is in that context that this Hon'ble Court had considered that the Assessing Officer would be required to dispose of the adjournment petition prior to passing the order. In the instant case, however, the petitioner did not apply within the time specified for affording its response. The application for extension was filed on the subsequent date. The said judgment does not support the petitioner's case. The judgment relied upon by Mr. Majumdar in the case of ***Tvl. Vikranth Construction*** (supra) considers the situation where on the date of hearing the petitioner had appeared and had written a letter for production of certain supporting documents and sought time. Without considering such petition, the impugned assessment order was passed. The facts of said case does not support the petitioner as well. The judgment delivered in the case of ***Piyush Keyal*** (supra) also does not support the petitioner's case as would appear from the discussions made as under. The same is in relation to an order passed under Section 148A(d) of the said Act. In the said case the assessee had sought for an adjournment on 17th March, 2022 through e-mail. The Assessing Officer without considering such application had purported to pass the order under Section 148A(d) of the said Act.

19. The aforesaid judgments do not support the petitioner since, in the instant case the petitioner was offered an opportunity to respond and

clarify by notice dated 12th April, 2023. The show-cause notice dated 9th March, 2024 records that the petitioner did not offer the clarification/details as called for, as such the show-cause was issued to extend further opportunity to the petitioner to responded by 14th March, 2022. The petitioner did not respond within such date. On 15th March, 2022 the petitioner did file an application for extension. Although, no order had been passed on such application it appears that the respondents did not choose to pass any order or uploaded any order until 22nd March, 2024. Mr. Dutt, learned Advocate representing the respondents by placing before this Court a document captioned ITBA-Assessment sheet submits that before the order of assessment was passed, the petitioner did not file any response. It was only after the order of assessment was passed that the response of the petitioner was filed. Mr. Majumdar, however, would submit that although, the aforesaid document records that the order of assessment was served on the petitioner by e-mail, there is no such e-mail communication and as such no reliance should be placed on such document.

20. Having regard to the above even if such document is not taken into consideration, from the averments made in paragraphs 10 and 11 of the petition it is not clear that the petitioner had filed its response prior to the order being passed and/or uploaded. In a case of this nature wherein the assessment order is sought to be impeached on the ground of violation of principles of natural justice, it is necessary that appropriate pleadings must be recorded indicating that the

response was filed before the assessment order was passed. It may be that there was some time gap between deactivation of the submit response button on the portal and the uploading of the assessment order, which may have permitted by petitioner to submit the response even after or simultaneously with the uploading of the assessment order. The petitioner had been given repeated opportunities to explain and provide details. In fact for reasons of failure on the part of the petitioner to give details as called for in the notice dated 12th April, 2023 issued under Section 142(1) of the said Act that a further opportunity was given to show-cause by notice dated 9th March, 2024, on the grounds identified in paragraph 2.4.9 of the said notice. Admittedly, the petitioner did not either respond or had applied for extension within due date.

21. Be that as it may, I find that as of today an order of assessment has already been passed. Without considering at this stage as to whether the notice issued under Section 143(2) of the said Act dated 11th April, 2023 and the show cause notice dated 12th April, 2024 are at variance, I am of the view that it would be prudent at this stage to permit the petitioner to approach the appellate authority, especially when there is an efficacious remedy in the form of appeal. I also notice that the present petition has been filed on 19th April, 2024, within the time specified for filing of an appeal, as such if the petitioner prefers an appeal within a period of 15 days from date of uploading of the order on the official website of this Court, the appellate authority shall be bound to hear out and dispose of the

appeal on merits by taking into consideration the response filed by the petitioner, especially in the light of the case made out by the petitioner that the notice issued under Section 143(2) of the said Act dated 11th April, 2023 for the assessment year 2018-19 is at variance with the variations proposed in the show cause notice dated 9th March, 2024, for the assessment year 2018-19.

22. It shall be open to the petitioner to apply before the appellate authority for stay of the impugned order. If such application is made, the appellate authority having regard to the facts of the case shall consider the same and shall also dispose of the appeal, if any such appeal is filed in terms of the aforesaid order, within a period of eight weeks from the date of filing the appeal.

23. With the above observations and directions the writ petition stands dispose of.

24. There shall be no order as to costs.

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

(RAJA BASU CHOWDHURY, J.)