OD-9

WPO/384/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ANISHA JALAN
Versus
UNION OF INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE RAJA BASU CHOWDHURY

Date : 6th May, 2024

Appearance :

Mr. Amit Agarwal, Adv.
Mr. Arif Ali, Adv.
Mr. Sarban Bhattacharjee, Adv.
... for the petitioner
Mr. Prithu Dudhoria, Adv.
...for respondents

The Court :

1. The present writ petition has been filed, inter alia, challenging the assessment order dated 26th March, 2024 passed under Section 147 read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act').
2. The short point involved in this petition is whether the respondents could purport to pass the order of assessment dated 26th March, 2024 by ignoring the response given by the petitioner, which was uploaded in the Grievance Acknowledgment Section beyond the date prescribed for

submission of response to the show cause notice. Admittedly, in this case a show cause notice dated 14th March, 2024 was issued in respect of the assessment year 2019-20 calling upon the petitioner to show cause as to why the assessment should not be completed under Section 144B read with Section 143(3) read with Section 147 of the said Act taking into consideration the facts enumerated in the said show cause notice. Accordingly, in terms of the show-cause, the petitioner was called upon to file his response through his registered e-filing account by 17:09 hours of 19th March, 2024. The said show cause notice, inter alia, further provided that in addition to filing written reply, the petitioner may seek for personal hearing so as to make oral submissions for the purpose of presenting his case provided, such request was made before the expiry of the compliance date. Records reveal that although, the time for submission of reply had expired on 19th March, 2024, the petitioner could upload an adjournment application through the portal on 21st March, 2024 seeking adjournment till 24th March, 2024. Such fact would corroborate from the print out of the adjournment request which has been annexed at page 57 of the present writ petition.

3. Mr. Agarwal, learned Advocate appearing in support of the aforesaid petition, submits that unfortunately for the petitioner, the submit response tab on the online portal was closed on 24th March, 2024 and as such finding no other alternative, the petitioner had uploaded his

response through the Grievance Section on the portal by submitting a grievance petition and by enclosing/attaching his response thereto. According to Mr. Agarwal, once the objection of the petitioner was uploaded on the portal, the authorities were obliged to take into consideration such objection and ought not to have disregarded the same. In support of his contention, he has placed reliance on an unreported judgment delivered by the High Court of Kerala at Ernakulam in W. A. No. 1693 of 2023 (Mallisseri Neelakandan Sankaranunni Namboodiri Vs. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer, Assessment Unit, Income Tax Department, National Faceless Assessment Centre, Delhi). He submits that failure to afford reasonable opportunity to the petitioner to respond to the show cause notice and non-consideration of the reply constitutes violation of the principles of the natural justice, and failure of justice. On such grounds the impugned order of assessment dated 26th March, 2024 should be set aside and the petitioner should be remanded back to the authorities.

4. Mr. Dudhoria, learned Advocate representing the respondents on the other hand, submits that the petitioner was given due opportunity to respond. The petitioner did not comply with the timeline as provided in the show-cause notice. He submits that personal hearing was offered to the petitioner and after hearing the petitioner the hearing was concluded on

19th March, 2024. He, however, does not dispute the fact that the petitioner had uploaded an adjournment notice on the portal on 21st March, 2024 and that the submit response tab on the portal was open till 23rd March, 2024. In so far as the reply submitted by the petitioner is concerned, the same being out of time, was not considered by the authorities.

5. Heard learned Advocates for the parties. Perused the materials placed on record. It is noticed that a show cause notice dated 14th March, 2024 was issued under Section 144B, read with Section 143(3), read with Section 147 of the said Act calling upon the petitioner to show cause as to why proposed variations should not be made and the assessment should not be completed accordingly. The petitioner was given time to respond to the show cause notice through his registered e-filing account within 17:09 hours of 19th March, 2024. Although the respondents contend that hearing on the aforesaid show-cause was concluded on 19th March, 2024, however, in this case it is noticed that the petitioner could upload an adjournment application on 21st March, 2024. The same pre-supposes that the submit response tab on the portal was kept open. If the hearing was concluded there was no reason for the respondents to keep the submit response tab on the portal open. Strangely, however, before expiry of the period of adjourned sought for, the submit response tab on the portal was closed on 23rd March, 2024. It may be noticed that

the petitioner finding no other alternative had uploaded his response through the 'Grievance Section' by filing a grievance petition and enclosing/attaching the response thereto. Although, the respondents contend that since, the said response was filed beyond the prescribed period, the authorities did not take into consideration of the same, I am, however, unable to subscribe to such an approach. I am of the view once, a response was filed by the petitioner, though belatedly, before passing of the final order, the authorities were obliged to take note of such response. Admittedly, in this case, the response was already on record, though belatedly. As such, it was not proper on the part of the respondent authorities to conclude the hearing of the aforesaid show-cause by ignoring the above response and to pass the order of assessment on 26th March, 2024. Similar view has been taken by the Hon'ble High Court of Kerala in the case of Mallisseri Neelakandan Sankaranunni Namboodiri *(supra)*.

6. Having regard to the aforesaid and further taking note of the fact that the petitioner had applied before the respondents for an adjournment and the submit response tab on the portal was abruptly closed, I am of the view that the final order of assessment cannot be sustained. Accordingly, the order dated 26th March, 2024 is set aside.

7. The authorities are, thus, directed to provide an opportunity of hearing to the petitioner by making available a video conferencing link, within a

period of one week from date of communication of this order and to conclude the said proceeding by considering the response given by the petitioner by passing an order within a period of two weeks from the date of concluding of hearing.

8. Since affidavits have not been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

9. With the above observations and direction, the writ petition is disposed of.

10. There shall, however, be no order as to costs.

11. Affidavit of service filed be kept with the record.

Urgent photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

SN.
AR(CR)