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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/454/2024
SHIVSHAKTI ENTERPRISES
VS
PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA AND ORS

BEFORE :
HON'BLE JUSTICE RAJA BASU CHOWDHURY
DATE : 29TH July, 2024.

Appearance :
Mr. Abhratosh Majumder, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddhertha Das, Adv.
...for petitioner
Mr. Tilak Mitra, Adv.
...for respondents

The Court:- 1. The present writ petition has been filed inter alia challenging the assessment order passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") read with Section 144B of the said Act in respect of assessment year 2022-23 dated 20th March, 2024. It is the petitioner's case that since variation was proposed in income/loss determination proposal by way of the show-cause notice dated 1st March, 2024 the petitioner was required to file a response thereto on or before 11.36 hrs. on 5th March, 2024.

2. The time to file the response was, however, unilaterally extended by the respondents till 7th March, 2024. On 7th March, the petitioner had sought for further time to file its response. Although the said application for extension was not responded to, however, since the

submit response button on the portal was kept activated the petitioner had duly filed its response to the aforesaid show cause on 12th March, 2024. Factum of filing of such response would corroborate from the acknowledgement issued by the respondents. A copy whereof has been annexed with the petition.

3. Notwithstanding, the aforesaid, the faceless assessing unit by the order impugned dated 20th March, 2024 issued under Section 143(3) read with Section 144B of the said Act by treating that no response had been received from the assessee, had disposed of the proceeding.

4. On 9th July, 2024 when this matter had come up for consideration this Court having regard to the case made out by the petitioner had directed the learned Advocate representing the respondents to take appropriate instructions. Today Mr. Mitra, learned Advocate appearing on behalf of the respondents acknowledges the fact that the petitioner had filed a response to the show cause. According to him, since, the response was filed beyond the time prescribed, the same was not taken into consideration.

5. Having heard the learned Advocates appearing for the respective parties and having considered the materials on record it would appear that in consonance with the provisions of Section 144B(6)(vii) of the said Act, the faceless assessing unit while proposing variation in the income/loss had duly afforded an opportunity to the petitioner to show cause by issuing a notice dated 1st March, 2024, in respect of the

assessment year 2022-23. Time to file response was fixed till 11.36 hrs on 5th March, 2024. The same was, however, unilaterally extended till 7th March, 2024. On 7th March, 2024 the petitioner had requested for an extension. Factum of such request would corroborate from the acknowledgement issued by the respondents. Subsequently, however, though, no formal order was passed on the extension application the petitioner was able to file its response to the show cause on the portal on 12th March, 2024. Factum of such submission of response by the petitioner would corroborate from the acknowledgement issued by the respondents.

6. Incidentally, the response filed by the petitioner was not taken into consideration by the faceless assessment unit in its order dated 20th March, 2024. The faceless assessment unit in fact proceeded on the premise as if no response had been filed. Having regard thereto, I am of the view that the aforesaid order stands vitiated by reasons of non compliance of the provisions of Section 144B (6)(vii) of the said Act inasmuch as despite affording the petitioner with an opportunity and despite the petitioner submitting its response, the faceless assessment unit has disposed of the assessment proceeding by passing an order without taking note of the response filed by the petitioner.

7. In view thereof, the order passed by the faceless assessing unit dated 20th March, 2024 in respect of the assessment year 2022-23 cannot be sustained and the same is accordingly set aside, with a further

direction on the faceless assessment unit to decide the assessment proceeding from the stage of filing of the response by the petitioner and to pass an assessment order thereon as expeditiously possible preferably within a period of six weeks from the date of communication of this order.

8. Accordingly, the petition stands disposed of.

9. There shall be no order as to costs.

(RAJA BASU CHOWDHURY, J.)

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