OD-7

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

WPO/556/2024
MOTI FINVEST PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY
Date: August 20, 2024

Appearance :
Ms. Pooja Jewrajka, Adv.
…for petitioner
Mr. Soumen Bhattacharjee, Adv.
Ms. Doyel Dey, Adv.
….for respondents

The Court: 1. Challenging, inter alia, a notice issued under Section 148A(b) of the Income Tax Act, 1961 (hereinafter referred to as the said Act), the order passed under Section 148A(d) of the said Act dated 26th April, 2023 as also the notice issued under Section 148 of the said Act dated 26th April, 2023, the present writ petition has been filed.

2. Ms. Jewrajka, learned Advocate appearing on behalf of the petitioner by drawing attention of this Court to the notice issued under Section 148A(b) of the said Act would submit that along with the said notice apart from the annexure, no details had been provided as to the nature or the source of information of the alleged undisclosed income of Rs.40 lakh which had been referred to in the said annexure. She submits that in the circumstances as aforesaid by notice in writing dated 24th

April, 2023 the petitioner had requested the authority to afford the petitioner with adequate information and details, for the petitioner to verify the same in order to appropriately respond to the said notice under Section 148A(b) of the said Act. According to the petitioner, notwithstanding receipt of such response, the Assessing Officer by glossing over the contention raised by the petitioner in its response dated 24th April, 2023, had purported to dispose of the notice by passing an order under Section 148A(d) of the said Act dated 26th April, 2023.

3. Ms. Jewrajka further submits in the facts noted hereinabove, the order passed by the Assessing Officer under Section 148A(d) of the said Act stands vitiated on the ground of violation of principles of natural justice and cannot be sustained and should be set aside.

4. On 5th August, 2024 when the matter was taken up for consideration, Mr. Bhattacharjee, learned Advocate appearing for the respondents had sought for an accommodation to take appropriate instruction as to whether any other communication had been made to the petitioner disclosing further information as sought for by the petitioner. Today, on instruction, he submits that no information or document on the basis of which show cause notice was sent was provided to the assessee at the time of issuance of the notice under Section 148A(b) of the said Act on 31st March, 2023 or thereafter.

5. Having heard the learned Advocates appearing for the respective parties and having taken note of the fact that in absence of the respondent disclosing the basis on which the show cause notice had

been issued and in absence of the disclosure as sought for by the petitioner as regards the purported escapement of the assessment for the assessment year 2019-20, in my view, the petitioner had been prevented from appropriately responding to the said notice which constitutes violation of principles of natural justice.

6. Accordingly, the order passed under Section 148A(d) of the said Act dated 26th April, 2023for the assessment year 2019-20 cannot be sustained and the same is, accordingly, set aside. As a sequel thereto, the notice under Section 148 of the said Act issued by the jurisdictional assessing officer on 26th April, 2023 for the assessment year 2019-20 is also set aside. The respondents are directed to forthwith make available the basis of the information based on which the notice under Section 148A(b) of the said Act had been issued. Such disclosure must be made within a period of two weeks from the date of communication of this order. Upon receipt of such disclosure, the petitioner shall respond to the show cause notice under Section 148A(b) of the said Act dated 31st March, 2023 for the assessment year 2019-20 within a period of 30 days therefrom and the same shall be disposed of upon granting an opportunity of hearing to the petitioner in accordance with law.

7. The writ petition stands disposed of.

(RAJA BASU CHOWDHURY, J.)

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