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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

APO/121/2023
IA NO.GA/1/2023

BLUECHIP CONCRETE PRIVATE LIMITED

-Versus-

UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 8th January, 2024

Appearance :
Mr. Subash Agarwal, Adv.
...for the appellant.

Mr. Vipul Kundalia, Adv.
Mr.Anurag Roy, Adv.
...for the respondent.

The Court : This intra-Court appeal filed by the petitioner is directed against an order dated 5th July, 2023 in WPO/1194/2023. In the said writ petition, the appellant had mentioned the order passed under Section 148A(d) of the Income Tax Act, 1961 dated 20th April, 2023 relating to the assessment year 2019-20. The writ petition has been disposed of by urging the assessing officer to observe all the procedures under Section 147 of the Act.

Aggrieved by such order, the appellant is before this Court.

We have heard Mr. Subash Agarwal, learned counsel appearing for the appellant and Mr. Vipul Kundalia, learned counsel appearing for the respondent.

The notice was issued under Section 148A(b) of the Act dated 10th March, 2023. There were three allegations against the assessee, the first of which is that a search and seizure was carried out by the Director of Investigation, Lucknow on 18th December, 2021 in the case of Raj Group and Ors., in which against one Girdhari Lal Goenka was also covered. It is alleged that in the appraisal report it has been mentioned that the assessee has taken unexplained total loan amount of Rs.5,17,20,077 and this has been treated as unexplained credit. The second allegation pertains to a loan said to have been taken by the assessee from Jajodia Finance Limited and the third is relating to a loan availed from Mainland Finance Private Limited The assessee had submitted his explanation to the notice on 10th April, 2023 and 18th April, 2023.

In so far as the first application in respect of Mr. Girdhari Lal Goenka and Raj Group are concerned, the assessee had requested for copies of the statements based on the third party information and also requested for opportunity of cross-examination to be provided to them. So far as the other two transactions are concerned namely Jajodia Finance Limited and Mainland Finance Limited, Mr. Agarwal has submitted his explanation justifying the transaction to the extent indicated in their explanation.

Mr. Agarwal, learned Advocate for the appellant would vehemently contended that present reassessment proceeding is absolutely harassment to the assessee and by making wrong entries by a clerk the assessee should not be penalised at this distance of time. As pointed out earlier, there are basically three allegations against the assessee. In the first set of allegations, the basis is a report drawn by the Investigation Wing of the Department pursuant to a search operation conducted with Raj Group and others and Goenka of Calcutta. Admittedly, the basis of the information pertaining to the said two companies and the nexus between those two companies and the assessee has not been disclosed to the assessee in spite of specific request. Therefore, we find to that extent there has been violation of principles of natural justice. So far as the allegation in respect of transaction with regard to Jajodia Finace and Mainland Finance Limited are concerned, we find that assessee has given an explanation which needs to be considered and the same cannot be done in a proceeding under Article 226 of the Constitution and it has to be considered by the Assessing Officer during the course of reassessment proceeding. Thus, we are inclined to partially grant relief to the assessee. Accordingly, the appeal is partly allowed.

The order passed by the assessing officer under Section 148A(d) of the Act dated 20.4.2023 is set aside. In so far as it pertains to the alleged transaction with Raj Group and Ors. and Sri Girdharilal Goenka of Calcutta, the matter is remanded back to the assessing officer with a direction to afford an opportunity to furnish the information based on which the investigation wing of the department seeks to rope in the assessee in the case of Raj Group and Ors. and Sri Girdharilal Goenka and after furnishing the necessary information the assessee should be granted a reasonable time to submit their reply and after considering reply appropriate fresh orders to be passed on merits and reconsidered in accordance with law. So far as the order passed by the Assessing Officer under Section 148A(d) of the Act with regard to the transaction with Jajodia Finance Limited and Mainland Finance Limited are concerned, the reassessment proceedings can proceed in accordance with law in respect of those two transactions.

Accordingly, the appeal is partly allowed to the extent as indicated above.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

S.Das/pkd/GH.