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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/123/2023
IA NO: GA/1/2023
EXCEL COMMODITY AND DERIVATIVE PRIVATE LIMITED
VS.
UNION OF INDIA & ORS.

BEFORE :

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

Appearance :
Ms. Arati Agarwal, Adv.
Ms. Rosy Banerjee, Adv.
...for appellant

Mr. Aryak Dutt, Adv.
...for respondent no.2

The Court : This intra-court appeal by the writ petitioner/assessee is directed against the order dated 5th July, 2023 in WPO No. 1193 of 2023. In the said writ petition the appellant/assessee had challenged the order passed under Section 148A(d) of the Income Tax Act, 1961 (the Act) dated 19th April, 2023.

Primarily two grounds were raised in the writ petition, firstly, that the procedure for faceless assessment was not followed. The second ground of challenge was on merits wherein it was contended that the explanation offered by the assessee for the allegation against them was not considered by the Assessing Officer and mechanically the same was rejected and the order dated

19th April, 2023 has been passed. So far as the first ground is concerned, several other appeals and writ petitions are pending before this Court and there are interim orders.

Learned Advocate for the appellant submitted that the appellant has got a strong case on merits and requested to urge those grounds. The allegation against the assessee was that they have taken a loan from Brightmoon Supply Pvt. Ltd. and the same has been shown to adjust outstanding loan and the assessee was called upon to substantiate the transaction. The assessee, in no uncertain terms, stated that Brightmoon Supply Pvt. Ltd. is a Non-Banking Financial Company and the assessee has taken unsecured loan of Rs.25,00,000/- during the assessment year 2019-20 and the same was repaid along with the interest in the same assessment year. The assessee enclosed the ledger copy along with balance confirmation along with its reply. Therefore, the assessee submitted that the allegation that they have routed back their unaccounted income by way of unsecured loan is baseless and without any corroborative evidence.

If such was the explanation given by the assessee, it was the duty of the Assessing Officer to consider the explanation and give reasons as to why it is not acceptable. However, the Assessing Officer only states that the assessee has failed to substantiate the alleged amount of escaped income of Rs. 25,00,000/- is a genuine transaction. The order passed under Section 148A(d) is a non-speaking order, outcome of total non-application of mind and it also reveals that the Assessing Officer had no material to controvert the explanation offered by the assessee that Brightmoon Supply Pvt. Ltd. is a NBFC and loan was taken during the assessment year 2019-20 and repaid along with interest in the same year and this was substantiated by the assessee by producing the ledger copy of a loan account.

Thus, we find it is not a case where the power under Section 148 of the Act could have been invoked by the assessing officer.

Accordingly, the appeal is allowed.

The order passed in the writ petition set aside. Consequently, the writ petition is allowed and the order passed under Section 148A(d) of the Act dated 19th April, 2023 is quashed and all other proceedings consequent thereto are set aside.

The stay application IA No : GA/1/2023 stands disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)

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AR(CR)