OD – 5

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

APOT/430/2023
IA NO.GA/2/2023

ADYA COMPEX PRIVATE LIMITED

-Versus-

INCOME TAX OFFICER, WARD 2(1), KOLKATA AND ORS.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 10th January, 2024

Appearance :
Mr. Dipayan Kundu, Adv.
...for the appellant.

Mr. Soumen Bhattacharjee, Adv.
...for the respondent.

The Court : This intra-Court appeal by the writ petitioner is directed against the order dated 6th June, 2023 in WPO/1020/2023. In the said writ petition, the appellant had challenged an order passed under Section 148A(d) of the Income Tax Act, 1996 dated 30th March, 2023 for the assessment year 2016-17 on the ground that the objection filed against the notice issued under Section 148A(b) of the Act dated 18th March, 2023 was not considered and an ex parte order has been passed. The assessing officer while passing the order dated 30th March, 2023 under Section 148A(d) notes that the assessee has failed to furnish any reply in response to the notice under Section 148A(b). Admittedly, the assessee did not upload the reply in the correct portal but appears to have sent it in the email address which is mentioned in the notice sheet after the notice issued dated 13th March, 2023. Though the explanation offered by the assessee is not fully convincing, yet we are of the view that it would be advisable to decide the matter to proceed than to proceed ex parte more particularly especially when the assessing officer seeks to reopen the scrutiny assessment order. We are of the view that one more opportunity should be granted to the assessee to submit its objections and the assessing officer shall re-do the exercise and pass fresh order Section 148A(d) of the Act after taking note of the objections filed by the assessee and after affording an opportunity of personal hearing to the authorised representative of the assessee either in person or through virtual mode.

For the above reasons, the appeal is allowed and the connected application stands closed.

Consequently, the order passed in the writ petition is set aside and the writ petition is allowed and the order passed under Section 148A(d) dated 30th March, 2023 and all other consequential proceedings are quashed and the matter is remanded to the assessing officer.

The assessee is directed to submit a fresh objection to the notice under Section 148A(b) of the Act, enclosing copies of the relevant documents as also the earlier explanation which was said to be sent by email dated 18th March, 2023 and the said application be filed by the assessee within fifteen days from the date of receipt of the server copy of this order after which the assessing officer shall afford an opportunity of personal hearing as mentioned above and pass fresh orders on merits and in accordance with law as expeditiously as possible.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

S.Das/