Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 14225 of 2024
CAN 1 of 2025
Deepak Agarwal
versus
Assistant Commissioner of Income Tax, Circle 11(1), Kolkata & Ors.

For the petitioner	:	Mr. Avra Mazumder Ms. Alisha Das Mr. Abhijit Agarwal Mr. Suman Bhowmik Ms. Elina Dey
For the State	:	Mr. Aryak Dutta Mr. Amit Sharma Mr. Abhishek Kr. Agrahari Ms. Riya Kundu
Heard on	:	03.09.2025.
Judgment on	:	**03.09.2025**

<u>Raja Basu Chowdhury, J (Oral):</u>

1. The affidavit-in-reply filed on behalf of the petitioner in Court today is taken on record.
2. The present writ petition has been filed, inter alia, challenging the order dated 6th April, 2024 issued under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the said Act) and the notice under Section 148 of the said Act dated 6th April, 2024 both in respect of the assessment year 2020-21.

3. The short point that falls for consideration in the instant writ petition is whether the approval granted under Section 151 of the said Act, by the sanction granting authority, in this case being PCIT, Kolkata-2 can be said to be valid. By placing the approval granted under Section 151 of the said Act, Mr. Mazumder, learned advocate representing the petitioner has claimed that the approval granting authority while granting the approval obviously did not consider the reply filed by the petitioner though, the petitioner had responded to the notice issued under Section 148A(b) of the said Act. He would submit that column No. 15 of the aforesaid sanction order specifically records that the assessee did not file any response to the notice under Section 148A(b) of the said Act, though, the petitioner had in fact filed a response. According to him, the order passed by the assessing officer which is based on an approval issued by the sanction granting authority stands vitiated inasmuch as the sanction granting authority had granted the sanction without due application of mind. The above order cannot be sustained and should be set aside.
4. Mr. Dutta, learned advocate appearing on behalf of the respondents although, has not placed before this Court the records of the case but has filed a short affidavit and has tried to justify the recording made in the column No. 15 of the sanction order issued under Section 151 of the said Act. According to him, ordinarily when a response to a notice under Section 148A(b) of the said Act is filed

online, the same is reflected in the sanction order automatically without any human interference. However, in the event, if the response is filed manually, there is no such reflection in the order of the sanction granting authority. According to him, this is an unintentional error from an administrative oversight in the documentation process. The mistake was not deliberate. The same cannot have the effect of vitiating the above order inasmuch as the sanction granting authority had duly considered the response.

5. Having heard the learned advocates appearing for the respective parties, I find from the disclosure made in the writ petition that the response to the notice under Section 148A(b) of the said Act was in fact filed, the same would corroborate from the order dated 6th April, 2024. Further in the sanction order though the sanction granting authority has recorded that he has considered the draft order, in my view, the same appears to be mechanical, as the same proceeds on the premise that no response was filed and there is also no reflection that he had considered the response.

6. Having regard to the above, it is very difficult to accept the explanation offered by the Deputy Commissioner of Income Tax Circle 11(1), Kolkata who is the deponent of the above affidavit. Incidentally, despite the petitioner alleging that the sanction granting authority had acted mechanically, I find the above affidavit has not been affirmed by the sanction granting authority, in fact, the deponent to the said affidavit, Ms. Pramod Lakra being the

Deputy Commissioner of Income Tax, Circle 11(1), Kolkata does not appear to have the authorization of the sanction granting authority to affirm the said affidavit. The defence set up by the respondents as regards auto population of acknowledgement of online response in the sanction granting order, would demonstrate complete non-application of mind by the sanction granting authority. This apart, it is well settled that an order passed by an authority cannot be improved by way of an affidavit, I find that while recommending the case, as a fit case for issuance of notice under Section 148, the sanction granting authority has only gone through the proposal of the AO and the materials on record, there is no reflection that the sanction granting authority had considered the response filed by the assessee. The above order appears to be mechanical. Since, the order under Section 148A(d) of the said Act was passed with the approval of the sanctioning authority, by reasons of the sanction being issued in a mechanical manner, the above order under Section 148A(d) of the said Act, also stands vitiated. The same cannot be sustained and the same is set aside.

7. Consequentially, the notice issued under Section 148 of the said Act for the assessment year 2020-21 is also set aside. This shall, however, not impede upon the rights of the respondents to initiate proceedings afresh by notice from the stage of receipt of the response filed by the petitioner. The authority while disposing of the proceedings shall consider the response filed by the petitioner in accordance with

law. For the purpose of limitation for passing the order under Section 148A(d), the period of one month shall commence when the notice in this regard is issued by the jurisdictional assessing officer provided, the notice is issued within a period of four months from date.

8. It is made clear that this Court has not gone into any other points raised by the petitioner and all other points are kept open. It is also made clear that if the petitioner is entitled to and seek for any additional document, the same shall be made over if found eligible.

9. With the above observations and directions, the writ petition is disposed of.

10. In view of the disposal of the writ petition, the connected application being CAN 1 of 2025 is also disposed of.

11. There shall be no order as to costs.

12. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

Sayandeep
A.R. (Court)