IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/28/2025
IA NO: GA/1/2025, GA/2/2025

ROSE BUD EDUCATION SOCIETY AND ANOTHER
VS.
UNION OF INDIA AND OTHERS

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE: 5TH MAY, 2025

Appearance:
Mr. Avra Mazumder, Adv.
Ms. Alisha Das, Adv.
Mr. Om Prakash Prasad, Adv.
Mr. Suman Bhowmik, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
Mr. Sourendra Nath Banerjee, Adv.
...for Appellants
Mr. Tilak Mitra, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for Respondent

The Court : We have heard Ms. Alisha Das, learned Advocate along with Mr. Avra Mazumder, learned Advocate for the appellants/assessees.

This intra-court appeal by the assessees is directed against the order dated 14th November, 2024 in WPO/710/2024. The appellants had challenged the order passed by the Assessing Officer under Section 148A(d) of the Income

Tax Act, 1961 (the Act) dated March 28, 2023 and the consequential assessment order dated March 22, 2024. The learned Single Bench was of the opinion that the appellants should exhaust the appellate remedy available under the Act and accordingly, disposed of the writ petition. It has been recorded in the impugned order that none appeared for the respondents/ Income Tax Department.

We have directed Mr. Soumen Bhattacharjee, learned standing counsel to appear on behalf of the Income tax Department and accept the notice. His appearance along with the appearance of Mr. Tilak Mitra, learned senior standing cousel, shall be regularized by the Department.

There is a delay of 90 days in filing this appeal. Considering the facts set out in the application being GA/1/2025, we find sufficient cause has been shown for not preferring the appeal within the period of limitation and accordingly, we exercise discretion and condone the delay in filing the appeal. GA/1/2025 is allowed.

As could be seen from the Memorandum of Appeal as well as the grounds raised in the writ petition, the appellants did not question the order passed under Section 148A(d) as well as the assessment order under Section 147 of the Act on the merits of the matter but solely on the ground that it has been passed in violation of the principles of natural justice. Therefore, we refrain ourselves from entering into the merits of the matter and we have heard learned Advocate appearing for the appellants as well as the learned Advocate appearing for the respondent/Department.

As pointed out above, the short issue which falls for consideration is whether there has been violation of principles of natural justice and if it is found so, then it would fall within one of the explanations which would entitle the Court exercising jurisdiction under Article 226 of the Constitution of India to interfere with such orders despite there being an appellate remedy provided under the Act. The fact, which culled out from the documents annexed to the stay petition, is that the Assessing Officer issued notice under Section 148A(b) of the Act on March 2, 2023 along with an annexure and was of the prima facie view that an amount of Rs.3,26,10,140/- is the income of the assessee, chargeable to tax, represented in the details of assets, has escaped assessment or is likely to have escaped assessment for the assessment year 2019-20. The assessees submitted their reply dated October 17, 2023 which was uploaded in the Income Tax Portal. The appellants would state that the change of identity and PAN number of the appellants and also various uploaded documents established its case and also mentioned that a return was filed on September 5, 2019 and therefore, the information received from the second respondent, namely, Income Tax Officer, Ward-1(1), Exempt, Kolkata, is incorrect. Thereafter, the respondent No.5, namely National Faceless Assessment Centre (NFAC) issued notice under Section 142(1) dated October 26, 2023 for which the assessees submitted their reply on November 7, 2023 along with the requisite documents which is stated to have been uploaded in the Income Tax Portal and the assessees have also given acknowledgement number. Subsequently, a show cause notice was issued on March 4, 2024 calling upon the assessees to submit their response by March 8, 2024 and the assessees would state that within the time permitted they uploaded the reply on March 7, 2024 in which detailed discussion on merit was made and all queries sought for were fully explained. The assessees received an intimation on March 8, 2024 that the assessees will be afforded an opportunity of hearing through video conferencing which was fixed on March 12, 2024 at 4 p.m. The assessees appeared in the video conferencing meeting and it was stated that certain verbal clarifications were sought for by the respondent No.5 for which the assessees wanted to submit documents and clarifications, but their case is that they could not upload the same in the Income Tax Portal. Therefore, by letter dated March 14, 2024 they opted for an adjournment. The assessees' further case is that without considering the submissions made by the assesses, vide letter dated March 14, 2024 the Assessing Officer proceeded to pass an order under Section 148A(d) of the Act dated March 22, 2024. Subsequently, the assessment order was passed and challenging those orders, the writ petition was filed.

On perusal of the assessment order, we find much of the facts stated by the assessee, as noted above, is not in dispute. This is evident from Para 5.1 of the assessment order dated March 22, 2024. The Assessing Officer would admit that the assessee was granted time till March 14, 2023, but did not furnish any reply, whereas the case of the assessees is that they could not upload the necessary documents and therefore, they requested for adjournment along with a brief explanation and the assessees would submit that the finding of the Assessing Officer that no reply was filed by the assessees till March 14, 2023 is factually incorrect.

Thus, considering the peculiar facts and circumstances of this case, it appears that the assessees did not have sufficient opportunity to put-forth their submissions in the form of documents to establish the merits of the matter. It is not that as if the assessees were not diligent in contesting the matter as could be seen from the various replies submitted by the assessees and also the acknowledgement of the e-Proceedings which are enclosed in pages 56 and 57 of the stay application. Therefore, we are of the view that one more opportunity can be granted to the assessees to go before the Assessing Officer, submit their documents and clarifications so that the assessees have the satisfaction of placing all records before the Assessing Officer and that the assessment can be redone. At this juncture, we take note of the apprehension expressed by the learned Senior Standing Counsel appearing for the Department that this order should not be taken as a precedent in all cases, more particularly, when the assessee did not file the writ petition within the period of limitation provided for filing a statutory appeal before the Commissioner of Income Tax (Appeals).

However, as noted above, the facts of this case are peculiar and moreover, the assessees stated to enjoy the Registration under Section 10(23C) of the Act and they had also filed the copies of the Deed of Trust, certified copy of the Registration under Section 12A and Section 80G and all other details as has been noted by the Assessing Officer himself in paragraph 4.5 of the assessment order dated March 22, 2024.

Thus, for the above reasons, we are inclined to interfere with the order of assessment and remand the matter back to the Assessing Officer for fresh consideration. Accordingly, the appeal is partly allowed and the assessment order dated March 22, 2024 is set aside and the matter is remanded to the Assessing Officer for fresh consideration.

The assessees are directed to place all documents including their written submission before the Assessing Officer within a period of three weeks from the date of receipt of the server copy of this order after which the assessees shall be afforded an opportunity of hearing through the virtual mode and the assessment shall be redone in accordance with law.

The assessees are at liberty to canvass all the grounds including the ground which they have raised challenging the order passed under Section 148A(d) of the Act.

It is made clear that this judgment and order has been passed considering the peculiar facts and circumstances of this case and not to be treated as a precedent.

Needless to state that the assessees should cooperate in the assessment proceedings and no request for adjournment shall be entertained.

The stay application, IA No: GA/2/2025, stands closed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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