

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Original Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

R.V.W 22 of 2024
With
G.A. 1 of 2024

Reserved on : 27.03.2025

Pronounced on: 03.04.2025

D.D. Infrastructure Private Limited

...Petitioner

-Vs-

Union of India & Ors.

...Respondent

Present:-

Mr. Pranit Bag

Mr. Anuj Kumar Mishra

Mr. Balaram Patra

... .. for the applicant

Mr. Prithu Dudherai

... .. for the private respondents

Rajarshi Bharadwaj, J:

1. The facts in a nutshell are that the writ petitioner, D.D. Infrastructure Private Limited, filed W.P.O. No. 271 of 2024 before the Hon'ble High Court, challenging the assessment order dated March 28, 2023, issued under Section 147 read with Sections 144 and 144B of the Income Tax Act, 1961, along with consequential penalty proceedings initiated against the petitioner.

2. The petitioner contended that it was not intimated about the initiation of reassessment proceedings or given an opportunity to present its case. The first intimation regarding the said proceedings was received only on February 27, 2024, indicating a serious violation of the principles of natural justice.

3. The Hon'ble Justice Md. Nizamuddin, vide order dated April 9, 2024, dismissed the writ petition, holding that the assessment order is an appealable order under the statute and that the writ court should not interfere.

4. The petitioner subsequently filed a review application against the said order, asserting errors apparent on the face of the record, primarily on the grounds that the order incorrectly recorded that the Revenue was represented during the hearing, whereas no such representation was made. The petitioner's counsel was not afforded an opportunity of being heard. The Hon'ble Court failed to appreciate the violation of natural justice and proceeded to dispose of the writ petition without considering its merits.

5. The Learned Counsel appearing for the petitioner submits that it was never served with any notice or intimation regarding the reassessment proceedings and the first communication regarding the assessment was received only on February 27, 2024. This failure to serve notice deprived the petitioner of its right to present objections, thereby violating the principles of natural justice.

6. The petitioner argues that the Advocate-on-Record was not given an opportunity to be heard. The impugned order mentions that "learned advocates appearing for the parties were heard," which is factually incorrect. The absence of a fair hearing further justifies the need for a review. It is specifically submitted that while the Advocate-on-Record was present, the Learned Counsel was not, and the Advocate-on-Record could not argue the matter effectively, leading to an unjust outcome.

7. Reliance is placed on the case of ***Kishori Prasad v. Union of India***, reported in **2008 SCC OnLine Cal 828**, wherein the Hon'ble Calcutta High Court held:

"When allegation was made that no instruction was given to the learned lawyers not to press, then it was incumbent on the part of the learned Tribunal to enquire into that aspect also. Procedural provision has been

made to render justice, not to render miscarriage of justice. So far as any other sufficient reason, mentioned in Order XLVII, Rule 1 also covers a case of this nature as litigant has engaged learned lawyers and he was completely and supremely rest assured that his case would be properly conducted before the learned Tribunal instead he finds later, contrary to his belief and trust, his case was not presented at all.”

The principle laid down in this case squarely applies to the present matter, where the absence of the Learned Counsel and the ineffective representation by the Advocate-on-Record led to a failure in properly presenting the petitioner's case.

8. The Learned Single Judge dismissed the writ petition on the ground that the assessment order is an appealable order under the statute. However, the petitioner submits that the presence of an alternate remedy does not bar a writ petition, especially in cases involving a breach of natural justice. Reliance is placed by the petitioner on judicial precedents like ***Indian Oil Corporation Ltd. and Another v. Sarvesh Kumar and Others*** reported in **2024 SCC OnLine Cal 2926** and ***Neha Bhawsingka v. Union of India*** reported in **[2024] 169 taxman.com 669 (Calcutta)** that recognize the right of an aggrieved party to approach the High Court under Article 226 of the Constitution of India in cases of procedural irregularity and denial of an opportunity to be heard.

9. The petitioner submits that the Learned Single Judge, while dismissing the writ petition, did not consider the grounds raised in the petition, particularly that no opportunity of hearing was provided to the petitioner before passing the impugned assessment order. The order, therefore, suffers from non-application of mind to the factual matrix of the case.

10. The petitioner contends that an adjournment was sought on genuine grounds, as its counsel was engaged in another matter before a different bench of the Hon'ble High Court. The refusal to grant an adjournment resulted in undue prejudice against the petitioner, reinforcing the necessity for reviewing the order.

11. In light of the foregoing submissions, the petitioner prays for a review of the order dated April 9, 2024, and requests the Hon'ble Court to recall the order and grant a de novo hearing of the writ petition, allowing the petitioner to present its case afresh.

12. Upon a comprehensive examination of the records submitted before this Court and after due consideration of the contentions advanced by the respective parties, this Court is inclined to allow the instant review application. The impugned order dated April 9, 2024, is vitiated by errors apparent on the face of the record, warranting judicial interference. It is a cardinal tenet of the principle of natural justice that no party should suffer adverse consequences without being afforded an opportunity of being heard. In the present case, the petitioner was not duly apprised of the reassessment proceedings, and the first intimation of the assessment order was received only on February 27, 2024. Such belated communication effectively deprived the petitioner of its right to submit a response, thereby constituting a violation to the principle of audi alteram partem. Additionally, the order states that "learned advocates appearing for the parties were heard," which is factually incorrect, as the Advocate-on-Record for the petitioner was not afforded an opportunity to advance arguments. These material discrepancies constitute manifest errors on the face of the record, justifying the invocation of this Court's review jurisdiction.

13. Furthermore, the rejection of the writ petition on the premise that an alternative statutory remedy was available disregards the well-settled legal position that the existence of an appellate or alternate remedy does not operate as an absolute bar to the exercise of writ jurisdiction, particularly where there has been a breach of principles of natural justice. The Hon'ble Supreme Court, as well as various High Courts, have consistently held that where an order is passed in derogation of fundamental procedural safeguards, the writ court is vested with the authority to intervene under Article 226 of the Constitution of India.

14. It is pertinent to note that the petitioner had sought an adjournment on legitimate grounds, as its counsel was engaged in another matter before a different bench of this Hon'ble Court. The refusal to grant such adjournment resulted in manifest prejudice against the petitioner, effectively depriving it of a reasonable opportunity to defend its case. This Court is of the considered view that in cases where substantive rights of a party are impacted due to serious procedural irregularities, the imperative of affording a fair opportunity to be heard must be scrupulously observed.

15. This Court refers to **Board of Control for Cricket in India v. Netaji Cricket Club** reported in **(2005) 4 SCC 741**, wherein the Hon'ble Supreme Court, while analysing the scope and objective of review, articulated the following observations:

“89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court, which would include a mistake in the nature of the undertaking, may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words ‘sufficient reason’ in Order 47, Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”

*The Hon'ble Supreme Court in **Yashwant Sinha v. Central Bureau of Investigation** reported in **(2020) 2 SCC 338** also revisited the scope of review by a court exercising its writ jurisdiction and observed:*

*“67. The foundations, which underlie the review jurisdiction, have been examined by this Court at some lengths in **S. Nagraj v. State of Karnataka** reported in **1993 Supp (4) SCC 595**:*

‘18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice, then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as a valid reason to recall an order.’”

16. In light of the foregoing legal principles, this Court finds no hesitation in holding that the review petition is maintainable. It is evident that the impugned order suffers from apparent errors, which, if left uncorrected, would result in grave injustice. The refusal to grant the petitioner a fair opportunity to present its case constitutes a procedural irregularity warranting review. The entire concept of writ jurisdiction is founded on equity and fairness, and therefore, it is the duty of the Court to ensure that no miscarriage of justice occurs due to a procedural lapse.

17. Accordingly, this Court finds merit in the review application. Consequently, the order dated April 9, 2024, is recalled and the writ petition being W.P.O. No. 271 of 2024, is restored for fresh adjudication. The petitioner shall be granted a reasonable opportunity to present its case and the matter shall be decided on its merits after due consideration of all submissions.

18. All pending applications are accordingly disposed of.

19. There shall be no order as to costs.

20. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

03.04.2025

PA (BS)