IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO NO.355 OF 2025

DREAMZ VANIJYA PRIVATE LIMITED
VERSUS
UNION OF INDIA AND ORS.

For the petitioner	:	Mr. Subash Agarwal, Adv. Mr. Rajarshi Chatterjee, Adv. Mrs. Suman Sahani, Adv. Mr. Amit Shaw, Adv.
For the respondents	:	Mr. Amit Sharma , Adv. Mr. Abhishek Kumar Agrahari, Adv.
Heard on	:	3.07.2025
Judgment on	**:**	**3rd July, 2025**.

RAJA BASU CHOWDHURY, J:

1. The petitioner seeks to challenge the assessment order dated 31st March, 2025 passed under Section 147 read with Section 254 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') for the assessment year 2011-12 on the ground that the said assessment order was passed without affording appropriate opportunity to the petitioner to respond to the proposed variation and without considering the response filed by the petitioner.

2. Records would reveal that challenging the previous assessment order dated 17th December, 2018 in respect of the self-same assessment year, an appeal was filed before the Commissioner of Income Tax (Appeal). Such appeal

was disposed of by an order dated 31st March, 2022. Being aggrieved, the petitioner had approached the Income Tax Appellate Tribunal, Kolkata. By an order dated 8th February, 2024, the Appellate Tribunal taking note of the case made out by the petitioner was of the view that the petitioner should be provided with one more opportunity to submit all details and, accordingly, while setting aside the assessment order as also the order passed by the Commissioner of Income Tax (Appeals) dated 31st March, 2022, restored the assessment proceeding to the file of the assessment officer for re-adjudication with a specific direction that the assessing officer shall grant sufficient time to the assessee for submitting requisite details and also commence investigation, if any, well in advance.

3. Pursuant to the above, a notice under Section 142(1) of the said Act was issued on 8th January, 2025. In furtherance to the above, on 13th January, 2025, the petitioner had submitted its response and disclosed additional documents. Subsequently on 21st March, 2025, a further notice under Section 142(1) of the said Act was issued calling upon the petitioner to produce all documents on or before 24th March, 2025. On the following date, the petitioner had sought for an adjournment and, accordingly, the petitioner was allowed time to submit reply till 27th March, 2025. In furtherance to the same, on 27th March, 2025, the petitioner had submitted several documents whereupon the Assessing Officer had circulated the draft assessment order to the assessee by notice dated 29th March, 2025 and called upon the petitioner to respond to the same on the following day at 6:00 P.M. According to the petitioner, the following day was a Sunday. The aforesaid time offered to the petitioner was not adequate for the petitioner to respond. Notwithstanding the above, the

petitioner had duly responded to the same on the following working day being a Monday i.e. on 31st March, 2025. The Assessing Officer without considering such response had passed the assessment order on 31st March, 2025 by recording that the petitioner had not offered any response to the proposed variation.

4. Mr. Agarwal, learned Advocate representing the petitioner has brought to the notice of the Court that a demand for a sum of Rs.38,79,98,944/- has been generated and raised on 28th March, 2025 even prior to the Assessing Officer circulating the draft order proposing variations. According to Mr. Agarwal, the order stands vitiated on such ground and should be set aside.

5. Mr. Sharma, learned Advocate representing the department acknowledges the facts that though the demand was raised, the same was not by the Assessing officer. On the issue of short time provided for affording response to the proposed variation, he would submit that considering the fact that the time to conclude the proceedings was till 31st March, 2025, a short period was offered. There is no irregularity in affording such short period having regard to limitation being involved.

6. Having heard the learned advocates appearing for the respective parties, I note that in the instant case the Appellate Tribunal had specifically directed the Assessing Officer to afford adequate and reasonable opportunity and to grant sufficient time to the assessee. I also find that in the instant case though the order of the Tribunal is dated 8th February, 2024, however, the proceeding by the Assessing Officer had only recommenced on 8th January, 2025. Further, even before the petitioner could file its response to the proposed variation, a demand had already been generated. The above would demonstrate a closed

mind of the Assessing Officer in deciding the issue. However, since Mr. Sharma would submit that the jurisdictional Assessing Officer has since then been changed, and a new incumbent has taken charge, I am of the view that justice would be sub-served in the event the matter is remanded back to the jurisdictional Assessing Officer from the stage of circulation of the draft order proposing variation and the consideration of the petitioner's response to the same. Accordingly, while setting aside the assessment order dated 31st March, 2025 passed under Section 147 read with Section 254 of the said Act for the assessment year 2011-12, I direct the jurisdictional Assessing Officer to decide on the assessment proceeding having regard to the response filed by the petitioner on 31st March, 2025 afresh, by passing an order, within 31st July, 2025. The purported demand as appearing at page 117 of the writ petition dated 28th March, 2025 is consequentially quashed.

7. The writ petition is, accordingly, disposed of.

(RAJA BASU CHOWDHURY, J.)

akg/