08
19.11.2026
Court No. 10
AGM

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 11162 of 2026

Dinesh Kumar Agarwal
-versus-
Assessment Unit, Income Tax Department, National Faceless Assessment Centre(NaFAC), New Delhi & Ors.

Mr. Avra Mazumder
Ms. Alisha Das
Ms. Sreeja Mukherjee
Ms. Saakshi Shaw
...For the Petitioner.

Ms. Sanjukta Gupta
... For the respondents.

1. The petitioner, in the present writ petition, has approached this Court under Article 226 of the Constitution of India, complaining that despite a clear remand direction to decide the matter afresh after granting hearing and cross examination, the Assessing Officer proceeded without complying with the said direction.

2. The petitioner is an assessee for the Assessment Year 2015-16, and the assessment was accordingly completed against the petitioner. Thereafter the petitioner preferred an appeal before the Income Tax Appellate Tribunal.

3. The Tribunal, by its order, allowed the appeal for statistical purposes and restored the matter to the file

of the Assessing Officer, with a specific direction to decide the issue afresh after affording a reasonable opportunity of hearing to the assessee, including an opportunity of cross examination of the persons whose statements were relied upon in light of the case of **Amit Agarwal vs. ACIT in ITA No. 2592 /Kol/2019.** The relevant paragraph 13.2 is reproduced below:

> *"13.2. Considering the above discussion in respect of provisions contained in sec. 142(3) read with sec. 142(2), we are inclined to consider the plea taken by the ld. Counsel to remit the matter back to the file of Ld. AO and direct the Ld. AO to make available the material gathered by him in the course of enquiry conducted in terms of sec. 142(2) and provide a reasonable opportunity of being heard to the assessee as enunciated u/s. 142(3) of the Act along with effective opportunity of cross examination as requested several times by the assessee. Thereafter, Ld. AO may complete the assessment in accordance with the provisions of law. Accordingly, ground no. 3 taken by the assessee is allowed for statistical purposes."*

4. Despite such direction, the Assessing Officer failed and neglected to comply with the said direction without assigning any reason whatsoever, which is the subject matter of challenge in the present writ petition.

5. It is submitted by the petitioner that the action of the Assessing Officer in not complying with the Tribunal's direction is illegal, arbitrary, lacks propriety and is not sustainable in the eye of law and is liable to be quashed and set aside.

6. In this context, learned counsel appearing for the petitioner places reliance upon paragraph 8 of the judgment of the Hon'ble Supreme Court, in the case of **Union of India –versus- Kamlakshi Finance**

Corporation Ltd. reported in **1991 (9) TMI 72-Supreme Court** wherein it has been observed that bypassing the orders passed by the Appellate Authority constitutes undue harassment and violates judicial discipline, which is reproduced below:

> ***"8.*** *We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, has been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assessee-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in kind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them."*

7. A further reliance has also been placed on **ITO v. M. Pirai Choodi, 2010 (15) SCC 283,** for the proposition that the Assessing Officer ought to have granted an opportunity of cross examination.

8. Learned counsel appearing for the Income Tax Authorities fairly submits that since the entire assessment order is passed in the faceless mode, due to technical laches, the Faceless Assessment of Officer was unable to comply with the directions of the Appellate Tribunal.

9. It is prayed that a specific direction be issued upon the Jurisdictional Assessing Officer to act in terms of the direction given by the Appellate Tribunal.

10. Having heard the parties at length and upon perusing the materials on record including the documents annexed to the writ petition, this Court finds that a prima facie case has been made out, warranting interference at this stage. This Court has taken the judicial notice of the Departments plea of technical laches in faceless mode, but cannot be accepted as a justification for non compliance.

11. Faceless assessment is a procedural mechanism but cannot override substantive rights of the assessee. Technical difficulty cannot defeat a binding judicial direction. Administrative inconvenience can never be a ground to deny natural justice.

12. In view of the above, this Court directs the Jurisdictional Assessing Officer to act in terms of the directions given by the Appellate Tribunal for the assessment year 2015-16 peremptorily, within a period of four weeks from the date of communication of this order by affording an opportunity of cross examination of the persons whose statements have been relied upon, and pass a reasoned and speaking order in accordance with law. Such decision shall be communicated within a week thereafter.

13. Since this Court has not gone into the merits of the case, the other points are left upon before the Jurisdictional Assessing Officer.

14. Since no affidavits have been called for, the allegations made in the writ petition are deemed to have been denied and not admitted.

15. With the above observations and directions that the Writ Petition being **WPA 11162 of 2026** is disposed of without going into the merits of the case.

16. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Smita Das De, J.)