OD-4

APOT/85/2022
IA No.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

M/S. R N FASHION

-Versus-

UNION OF INDIA AND ORS.

Appearance:
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Samit Rudra, Adv.
...for the appellant.

Mr. Soumen Bhattacharyya, Adv.
…for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 20th May, 2022.

The Court : This intra Court appeal, at the instance of the petitioner/appellant, is directed against the order dated 7th April, 2022 in WPO/1943/2022. The appellant had filed the writ petition challenging the order dated 23rd March, 2020 (wrongly noted by the learned writ Court as 23rd June, 2022) passed under Section 148A(d) of the Income Tax Act, 1961. The learned Single Judge was of the view that the appellant did not file their objection to the notice issued under Section 148A(b) of the Act

within the time permitted and, therefore, the Court was not inclined to interfere with the order dated 23rd March, 2022. The correctness of the order passed in the writ petition is challenged before us.

We have heard Mr. Pratyush Jhunjhunwala, learned Advocate appearing for the appellant and Mr. Soumen Bhattacharyya, learned standing Counsel for the respondent. At the very outset we need to point that the assessing officer, in the instant case, Sri Niladri Kumar Ghosh, ITO, Ward 44(1), Kolkata acted in utmost haste for reasons best known to him. We support such conclusion with the following reasons:

The appellant was issued notice under Section 148A(b) of the Act calling upon them to show cause as to why action should be initiated for reopening the assessing by invoking the power under Section 184A of the Act. The notice stipulated that the reply be submitted by the appellant not later than 18th March, 2022. The appellant bad uploaded their reply/response on 21st March, 2022. This cannot be disputed by the Department as the screen shot has been provided in page 71 of the memorandum of appeal. The ITO proceeded to pass the order dated 23rd March, 2022 stating that the assessee did not file any response within the stipulated time and, therefore, concluded that the assessee has nothing to submit in their response. Admittedly, 18th March, 2022 was a public holiday

on account of the Holi festival. It is not clear as to whether the concerned ITO had attended office or he was enjoying the holiday. In any event, a purposive interpretation needs to be given to the statutory provision. The opportunity provided under Clause (b) of Section 184A of the Act should be a meaningful opportunity. The statute provides for granting time to submit reply within seven days, but not exceeding 30 days from the date on which the notice is issued. Thus, a reasonable view ought to have been taken by the ITO in the instant case as admittedly the reply cannot be submitted on 18th March, 2022 if it was required to be submitted in physical form because the Income Tax Department was closed on account of a public holiday. Therefore, the interpretation given by the ITO is a thoroughly narrow interpretation and a perverse outlook.

It was argued on behalf of the respondent that had the assessee made a request for extension of time as provided in clause (b) of Section 148A, then in all probabilities, there could have been a chance for grant of extension of time. However, the assessee did not make any such request. This argument also has to fail for the simple reason that it is on record that the reply/objection had been filed online on 21st March, 2022 and if that is the factual position, it is deemed that the assessee had sought for extension of time. It was further argued on behalf of

the revenue that the Court has to interpret the time line stipulated in Clause (b) of Section 148a strictly in accordance with statutory provision and, if any latitude is granted it will be open flood gates of litigation. We are clear in our mind that we are not adjudicating a public interest litigation but an aggrieved assessee is before us. Therefore, if there are other similar cases where the ITOs had taken a perverted approach in the matter, those assessee would also be entitled to seek for legal remedy. To support the contention on behalf of the revenue reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Rajendra Singh vs. State of Madhya Pradesh & Ors.* reported in 1996 SCALE (5) 793. Going through the decision, we find the facts are entirely different and the decision is wholly inapplicable to the facts and circumstances of the appeal on hand.

The learned Advocate appearing for the appellant has drawn our attention to a recent decision of the Delhi High Court in the case of *Divya Capital One Private Limited vs. Assistant Commissioner of Income Tax, Circle-7(1), Delhi & Anr.* in WP(C) No.7406/2022 dated 12th May, 2022. We find that the facts in the said case are identical to that of the case before us. The Hon'ble Division Bench had taken note of the new re-assessment scheme introduced by the Finance Act, 2021 and pointed out that the safeguards were brought in the amended re-assessment scheme in

accordance with the judgment of the Hon'ble Supreme Court in *GKN Driveshafts (India) Ltd. vs. ITO,* reported in (2003) 259 ITR 19 (SC) before any exercise of jurisdiction to initiate reassessment proceedings under Section 148 of the Act. Further, the Court held that the term "information" as contained in Explanation-1 to Section 148 cannot be lightly resorted so as to reopen assessment and this information cannot be a ground to give unbridled powers to the revenue. Further the Court took into consideration the order which was impugned therein and found the same to be cryptic.

The next aspect which the Court considered was whether the petitioner therein was denied effective opportunity to file reply and it was held that the petitioner therein had a right to get adequate time in accordance with the provisions of the Act to submit its reply and the assessing officer in the said case had passed an order under Section 148A(d) of the Act in great haste and in gross violation of the principles of natural justice as the assessee therein was not given reasonable time to file reply. Further the Court noted that Section 148A(b) permits the assessing officer to suo motu provide upto 30 days period to an assessee to respond to a show cause notice issued under Section 148A(b) which period may, in fact, be further extended upon an application made by the assessee in this behalf and such period given to the assessee is excluded in computing the period of limitation for

issuance under Section 148A of the Act in terms of the 3rd proviso under Section 149 of the Act. In the said case also, the assessee had file their reply by 31st March, 2022 and the same was available on record. However, the reply was not considered as per the mandate contained in Section 148A(c) thereby violating the duty cast upon the assessing officer. In paragraph 16 of the said decision the significance of issuance of show cause at a stage prior to issuance of reassessment notice under Section 148 of the Act has been pointed out in the following terms:

> *"This Court is of the opinion that significance of issuance of a show cause notice at a stage prior to issuance of a reassessment notice under Section 148 of the Act has been lost on the Respondents. This Court takes judicial notice that in a majority of reassessment cases post 1st April, 2021, the orders under Section 148A(d) of the Act use a template/general reason to reject the defence of the assessee on merits, namely, "found devoid of any merit because the assessee company has failed to produce the relevant documents in respect of transactions mentioned in show case notice . . . . it is established that the assesssee has no proper explanation. . ." Consequently, this Court is of the opinion that a progressive as well as futuristic scheme of re-assessment whose intent is laudatory has in its implementation not only been rendered nugatory but has also had an unintended opposite result."*

As mentioned above, the facts of the case on hand are identical to that of the facts in Divya Capital *(supra)*. In fact, the present facts are slightly better in the sense that the reply was uploaded online by the assessee on 21st March, 2022 and the time limit for filing the reply in terms of notice expired on 18th March, 2022 which was a public holiday and the following two days namely, 19th March, 2022 and 20th March, 2022 were Saturday and Sunday. Therefore, the next working day was 21st March, 2022. It appears that the assessing officer is not aware of the provisions of the General Clauses Act and, therefore, needs to be appraised of the same. Thus, we have no hesitation to hold that the assessing officer acted in great haste and virtually reduced the procedure under the amended provision to a nullity. We have queried the learned Advocate appearing for the assessee as to whether the assessment was getting time-bared. The prompt reply was that the power to re-assess is available to the authority till the year 2023 if permissible under law. Therefore, we fail to understand as to what was the great hurry on the part of the assessing officer, Sri Niladri Kumar Ghosh to pass the order dated 23rd March, 2022 by ignoring the reply given by the assessee and uploaded in the department's portal on 21st March, 2022. In order to ensure that the other officers who are also similarly placed should not reduce the provisions of the Act in an empty formality,

we are inclined to impose cost on the authority to serve as a deterrent. For all the above reasons, the appeal is allowed and the order dated 23rd March, 2022 passed under Section 148A(d)and the notice dated 11th March 2022 are quashed and the matter is remanded to the assessing officer to take note of the reply given by the assessee dated 21st March, 2022 and consider the same. According to the learned Advocate for the appellant, the assessee sought for certain information. Hence, this reply should be considered in a meaningful manner and action be initiated in accordance with the law. There will be an order directing the respondent/department to pay costs of Rs.15,000/- to the West Bengal State Legal Services Authority within three days from the date of which the server copy is made available and the department is granted liberty to recover the said amount from the concerned Income Tax Officer, Sri Niladri Kumar Ghosh, Ward 44(1), Kolkata in the manner provided above.

Consequently, the order passed in the writ petition is set aside and the writ appeal is allowed and the order dated 23rd March, 2022 as well as the notice issued under Section 148 of the Act dated 11th March, 2022 are quashed.

After we have dictated the order imposing cost on the department recoverable from the concerned ITO, Mr. Niladri Kumar Ghosh, learned standing counsel for the department had made a

prayer saying that cost need not be imposed on the department/officer and he will take the responsibility of conveying the message as to what would mean by 'reasonable opportunity to the assessee'.

Accepting the said submission, we delete that portion of the direction imposing cost on the department/officer.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As/S.Das