

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice T.S.Sivagnanam

And

The Hon'ble Justice Bivas Pattanayak

M.A.T. 917 of 2022

with

IA no. CAN 1 of 2022

Maharaja Edifice Pvt. Ltd.

Vs.

Union of India & Ors.

For the Appellant

Mr. Himangshu Kr. Ray,

For the State

Mr. Smita Das De

Heard on : 12.07.2022.

Judgment on : 12.07.2022.

T.S.Sivagnanam, J.

By consent of the parties the appeal and the application are taken up for hearing together.

We have heard Mr. Ray, learned Advocate for the appellant and Mrs. De, learned Advocate, for the State respondents.

The appeal and the writ petition are taken up for disposal.

The appellant has approached the writ court by filing WPA 9856 of 2022 challenging the assessment order passed under the provisions of the

Income Tax Act 1961 dated 07th April, 2022 for the assessment year 2018-19 primarily on the ground that it has been passed in violation of the principles of natural justice.

We have heard the learned Counsel for the parties and carefully perused the materials placed on record. We concur with the submissions made by the learned Advocate for the appellant. We support such conclusion with the following reasons.

The Assessing Officer issued notice under Section 148A(b) of the Act on 16.03.2022 stating that he has information which suggests that income chargeable to tax for the relevant assessment year has escaped the assessment within the meaning of Section 147 of the Act. The notice stated that the details of the information and enquiry, if conducted, are enclosed with the notice in Annexure A. On receipt of the notice, the assessee found there was no attachment as Annexure A. Therefore, the assessee submitted his response through e-proceedings on 21.03.2022 pointing out that they have not been furnished the annexure said to have been appended to the notice under Section 148A(b) dated 16.03.2022. There was no reply given by the Assessing Officer but another notice under Section 148A(b) of the Act dated 21.03.2022.

It is the submission of Ms. Das De that this second notice was issued as the first notice did not provide the minimum time of seven days as it had provided only 5 days' time. Along with the notice it has been stated that information available with the Department is enclosed in Annexure A. The Annexure A did not contain any information but it is titled as "case related

information detail”. This is a tabular statement. The assessee on receipt of the same had filed their response through e-proceedings on 24.03.2022. They have also attached various documents along with their response dated 24.03.2022. It is, thereafter, the order has been passed under Section 148A(b) of the Act. It is surprising to find that in the said order the officer has furnished information which is running to more than seven paragraphs. This information was not furnished to the assessee at the first instance and what was appended to the notice dated 21.03.2022 was only case related information details. Therefore, this court is convinced that there has been violation of principles of natural justice inasmuch as the appellant was not furnished with full information based on which the assessment was sought to be reopened.

For the above reason, the writ appeal as well as the writ petition is allowed. The order under Clause (d) of Section 148 A of the Act dated 07.04.2022 is set aside and the matter is remanded to the Assessing Officer to the position when he issued notice under Section 148A(b) of the Act dated 21.03.2022. The assessee is directed to take note of the information mentioned in the order dated 07.04.2022 passed under Clause (d) of Section 148A of the Act as the basis for reopening and submit their objections within 10 days from the date of receipt of server copy of this order and on receipt of the affidavit of opposition the Assessing Officer shall proceed to complete the assessment in accordance with law.

In the light of the above direction, the notice issued under Section 148A of the Act dated 07.04.2022 shall not be enforced. Needless to say that the assessee shall cooperate with the assessment proceedings and shall comply with the directions within the time fixed by this Court.

The appeal along with the connected application is, accordingly, disposed of.

(Bivas Pattanayak, J.)

(T.S.Sivagnanam, J.)

KOLE/S. Banerjee
Assistant Registrars (Court)

MAT 917 of 2022

Maharaja Edifice Pvt. Ltd. & Anr.

Vs.

Union of India & ors.

Mr. Himangshu Kr. Ray ... for the appellants.

Ms. Smita Das De for the respondents.

This matter has been listed under the caption "To Be Mentioned" pointing out certain typographical errors in the judgment and order dated July 12, 2022.

The following typographical errors may be rectified:-

1. In the record of appearance and in page 1 of the judgment and order dated July 12, 2022, the name of the learned Advocate for the respondents be shown as "Ms. Smita Das De" representing the respondents in place and stead of "Mr. Smita Das De" representing the State.
2. In page 2 of the judgment and order, the date has been mentioned as "21.03.2022" and the correct date is "17.03.2022". The same be substituted.

3. In page 3, the provision has been mentioned as “Section 148A(b)”, but it should be mentioned as “Section 148A(d)”.
4. In last paragraph of page 3, it has been mentioned as the “affidavit of opposition”; instead it shall be mentioned as “reply”.

In page 4, “Section 148A” shall be shown as “Section 148”.

This order shall form part of the judgment and order dated July 12, 2022.

Time for submission of reply is extended by a period of 10 days from date.

Affidavit-in-opposition filed in Court today by the respondents is taken on record.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Bivas Pattanayak, J.)