

**Item No.4.**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA**

**CIVIL APPELLATE JURISDICTION**

**APPELLATE SIDE**

HEARD ON: 21.12.2022

DELIVERED ON:21.12.2022

**CORAM:**

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM**

**AND**

**THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T No.1930 of 2022**

**with**

**I.A. No.CAN 1 of 2022**

**Green Valliey Industries Limited.**

**Vs.**

**Assessment Unit, Income Tax Department & Ors.**

**Appearance:-**

**Mr. Abhratosh Majumdar, Sr. Adv.,**

**Mr. Avra Mazumder,**

**Mr. Ramesh Kumar Patodia,**

**Ms. Megha Agarwal,**

**Mr. Binayak Gupta,**

**Ms. Kausheyo Roy**

**...**

**for the appellant.**

**Ms. Smita Das Dey**

**....**

**for the respondents.**

**JUDGMENT**

***(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)***

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 22<sup>nd</sup> November, 2022 in W.P.A.

23327 of 2022. The said writ petition was filed challenging an assessment order dated 28<sup>th</sup> September, 2022 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 ("the Act" for brevity). The learned Single Bench dismissed the writ petition on the ground that the appellant should avail the appellate remedy under the provisions of the Act. Aggrieved by such order, the appellant is before us by way of this appeal.

2. We have heard Abhratosh Mazumder, learned senior counsel appearing for the appellant duly assisted by Mr. Avra Mazumder, learned Advocate and Ms. Smita Das De, learned senior standing counsel for the respondents.

3. After elaborately hearing the learned senior counsel appearing for the appellant and the learned senior standing counsel for the respondents / department, we find that the assessment had been completed by the officer with utmost haste without affording a reasonable opportunity for the appellant to put forth its contentions especially when the allegation was one of "mismatch". The undisputed facts are that show cause notice was issued on 14<sup>th</sup> September, 2022 at 6.31 p.m. communicated to the appellant / assessee via email. The show cause notice is an elaborate show cause notice running to more than 18 pages. In the penultimate page, it has been stated that the appellant /

assessee has to give his response through online mode by 17.29 hours on 19<sup>th</sup> September, 2022. At first blush, it appears that the appellant / assessee has five days time to respond but however, when we look at the calendar, we find that the time granted was only two days, as we have to exclude 14<sup>th</sup> September, 2022, the date of issuance of show cause notice and 17<sup>th</sup> September, 2022 and 18<sup>th</sup> September, 2022 have to be excluded as they are being Saturday and Sunday and especially on 17<sup>th</sup> September, 2022, it was an auspicious day where pujas were being celebrated through the State of West Bengal.

4. This would be sufficient for us to set aside the assessment order on the ground of undue haste and failure to give adequate opportunity to the appellant to put forth its submission. Nevertheless, the assessee had submitted an interim reply on 19<sup>th</sup> September, 2022 specifically pointing out that the case is voluminous in nature, it requires sufficient time and the time granted was insufficient and it would be very difficult for it to submit an effective reply. Further, the assessee had made a specific request to provide the data of GSTR-1 pertaining to various parties as it was not privy to the date based on which the show cause notice was issued calculating the difference of Rs.58,74,43,529/-.

5. Though such a plea was raised, the assessing officer did not extend time but proceeded to pass the impugned assessment order.

6. On a perusal of the assessment order, it is seen that the interim reply given by the appellant / assessee has been verbatim extracted in the order and the assessing officer states that the reply of the assessee is not found acceptable. In paragraph 4.5.3 of the assessment order, the assessing officer says that the show cause notice was served on 14<sup>th</sup> September, 2022 and five days were given to the assessee to submit its reply.

7. As pointed out earlier, the assessee had not been given 5 days time and effectively, they had only 48 hours to submit its reply. With regard to the details regarding the GSTR-1 returns of the other parties is concerned, the assessing officer would state that the portal was kept open. However, there was nothing on record to indicate that the assessee was put on notice that the portal was kept open and it could do verification so as to reconcile any discrepancy. Thus, we are fully satisfied that there is total violation of principles of natural justice, which would be a good ground to interfere with the assessment order despite an appellate remedy existing over such an order.

8. In the result, the appeal is allowed and the order passed in the writ petition is set aside. Consequently, the assessment order dated 28<sup>th</sup> September, 2022 is set aside and the matter is remanded back to the assessing officer for fresh consideration.

9. The assessing officer shall provide the necessary documents sought for by the assessee in its interim reply dated 19<sup>th</sup> September, 2022 and grant sufficient time to enable the assessee to reconcile the alleged differences after affording reasonable time to submit a final reply to the show cause notice. The case shall be adjudicated and a speaking order be passed on merits and in accordance with law.

10. There shall be no order as to costs.

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

**(T.S. SIVAGNAM, J)**

I agree,

**(HIRANMAY BHATTACHARYYA, J.)**