

**Form No. J.(2)**  
**Item No.2**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

HEARD ON: 12.05.2023

DELIVERED ON: 12.05.2023

**CORAM:**

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNAMAM  
AND  
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT 729 of 2023**

**With**

**I.A. No. CAN 1 of 2023**

**Pramod Kumar Madhogarhia**

**Vs.**

**The Union of India & Ors.**

**Appearance:-**

**Mr. Himangshu Kumar Ray**

**Mr. Paban Kumar Ray**

**Ms. Shiwani Shaw**

**Mr. Nitish Bhandary**

**.....For the Appellant**

**Ms. Smita Das De**

**.....For the Respondents**

**JUDGMENT**

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 4<sup>th</sup> April, 2023 in W.P.A. No.6378 of 2023. In the said order, the appellant had challenged the order passed by the respondents under Section 148A(d) of the Income Tax Act, 1961 (for brevity, “the Act”) dated 30<sup>th</sup> March, 2022. The learned Single Bench had dismissed the writ petition on the ground that during the pendency of the writ petition, an order under Section 147 of the Act has been passed on 22<sup>nd</sup> March, 2023, which is an appealable order. Aggrieved by the dismissal of the writ petition, the appellant has filed the present appeal.
  
2. We have heard Mr. Himangshu Kumar Ray, learned advocate for the appellant and Ms. Smita Das De, learned standing counsel for the respondents.
  
3. The respondents issued notice under Section 148A(b) of the Act dated 15<sup>th</sup> March, 2022. The said notice was served through e-mail on 16<sup>th</sup> March, 2022 at 01:02 pm IST. The appellant’s contention is that both 17<sup>th</sup> March, 2022 and 18<sup>th</sup> March, 2022 were holidays. Nevertheless, with whatever records, which were there in their possession, an interim reply was sent on 17<sup>th</sup> March, 2022. The respondents had passed the order under Section 148A(d) of the Act on 30<sup>th</sup> March, 2022, which was impugned in the writ petition.

4. On a perusal of the said order, we find that there is no discussion about the reply filed by the appellant but certain figures, which have been mentioned in the reply, have been noted in the order dated 30<sup>th</sup> March, 2022. However, there is a fundamental error in the decision making process because the show-cause notice dated 15<sup>th</sup> March, 2022 states that information, as received from sources that the assessee have had a purchase transaction with two parties and they were directed to furnish the corroborative and authentic details/documents in support of the two transactions, but the source of the information has not been disclosed to the assessee nor as to on what basis the Assessing Officer entertained such doubts with regard to those transactions. Nevertheless, the assessee submitted an interim reply stating about the nature of transactions with those two parties and enclosed the ledger for ready reference of the respondents.
5. The appellant's case is that due to want of time, the appellant could not produce the bank statements and other documents, more particularly when 17<sup>th</sup> March, 2022 and 18<sup>th</sup> March, 2022 were holidays. The Assessing Officer appears to have not given an opportunity of hearing to the assessee nor has specifically dealt with the correctness of the ledger, which were enclosed along with the interim reply dated 17<sup>th</sup> March, 2022.
6. We are of the opinion that the time granted to the assessee to submit his reply especially when the source of information based on which the reopening proceedings were initiated having not been disclosed to the

assessee, was thoroughly inadequate. This has disabled the assessee from putting forth his submissions in a proper and effective manner.

7. It is true that the assessee had filed the writ petition only on 16<sup>th</sup> March, 2023. However, in the interregnum, the Assessing Officer has not passed the order under Section 147 of the Act. However, such an order was passed during the pendency of the writ petition presumably on the ground that no interim order was in force in the writ petition.
8. Be that as it may, the opportunity afforded at the first instance should be an effective opportunity because the power of reopening of an assessment is a power, which is to be sparingly used for adequate reasons. Therefore, we are convinced to hold that there has been violation of principles of natural justice.
9. For the above reasons, the appeal is allowed and the order passed in the writ petition is set aside and the writ petition is allowed and the order passed under Section 148A(d) of the Act and the assessment order dated 22<sup>nd</sup> March, 2023 are set aside and the matter stands restored to the file of the respondents/Assessing Officer at the stage of the show-cause notice under Section 148A(b) of the Act.
10. The assessee is directed to submit a comprehensive reply enclosing all documents in support of his claim and the Assessing Officer shall redo the process in accordance with law. The assessee cannot raise the point of

limitation before the Assessing Officer as this order has been passed accepting the case of the assessee that there has been violation of the principles of natural justice, alleged. The Assessing Officer shall also furnish the relevant documents based on which the show-cause notice dated 15<sup>th</sup> March, 2022 under Section 148A(b) of the Act has been issued.

11. The Assessing Officer shall also afford an opportunity of personal hearing to the authorised representative of the assessee.
12. There shall be no order as to costs.
13. 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)**  
**CHIEF JUSTICE**

I agree,

**(HIRANMAY BHATTACHARYYA, J.)**

Pallab/K.S. AR(Ct.)