(2022) 06 CAL CK 0056

In the Calcutta High Court

Case No : MAT No. 849 Of 2022, IA No. CAN 1 Of 2022

Babcock Borsig Limited — APPELLANT

Vs

Union Of India & Ors. — RESPONDENT

Date of Decision : 21-06-2022

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 148, 148A(b), 148A(d)

Citation : (2022) 06 CAL CK 0056

Hon'ble Judges : T.S. Sivagnanam, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Ranjit Kumar Murarka, Vivek Murarka, Dibanath Dey, Smita Das Dey

Final Decision : Disposed Of

Judgement

T.S. Sivagnanam, J

With the consent of either of the parties, the writ petition being WPA 7824 of 2022 is treated as on day’s list and taken up for disposal alongwith the instant appeal.

This appeal has been filed by the writ petitioner challenging the order dated 05.05.2022 passed by the learned single Judge while directing the affidavit-in-opposition to be filed by the respondent department declined to grant an interim order in favour of the appellant/ assessee. The appellant filed a writ petition challenging the notice issued under Section 148A(b) of the Income Tax Act (in short “the Act”) dated 12.03.2022, which has been furnished alongwith the supplementary affidavit, which is taken on record as well as the order passed under Clause (b) of Section 148A of the Act dated 30.03.2022. The proceedings were put to challenge on the ground of violation of principles of natural justice.

After the conclusion of the scrutiny assessment proceedings under Section 143(3) of the Act by order dated 06.05.2021, the assessing officer has initiated proceedings under the amended Act and a notice under Section 148A(b) of the Act dated 12.03.2022 was issued. By the said notice the assessee was informed that the assessment is to be reopened.

The assessee had submitted reply dated 16.03.2022 enclosing the copy of the ledger, copy of the bank statements, details regarding the interest paid, how the loan was repaid, the amount of brokerage was paid and contended that the transactions they have made with M/s. Ambala Trafin Private Limited is a genuine transaction and no income of the assessee has escaped assessment for the assessment year under consideration 2018-2019. The assessing officer while passing the order dated 30.03.2022 has noted the reply given by the assessee in paragraph 3 of the order after which he proceeded to pass an order in the remaining paragraphs i.e. paragraphs 4 to 7 which are not explicitly stated in the reasons for reopening as per the annexure to the notice under Section 148A(b) of the Act dated 12.03.2022.

It is prima facie seen that the assessee has not been furnished the full information based on which the reopening proceedings were proposed. Furthermore, there is a reference to a search action which is conducted and statement being recorded from a Director of the company on 03.01.2019 etc. If that is so, the appellant should have full information so as to enable them to give effective reply. This having not done, this court is of the view that the principles of natural justice have been violated and the appellant should be afforded with an opportunity to put forth their contention.

In the light of the above, the order dated 30.03.2022 under Clause (d) of Section 148A of the Act shall be reckoned for reasons for reopening and the appellant assessee is directed to file an objection not later than two weeks from the date of receipt of server copy of this order and also enclose all documents in support of the claim and thereafter the assessing officer shall consider the reply and documents and afford an opportunity of personal hearing to the appellant/writ petitioner and pass fresh orders under Section 148A(d) of the Act in accordance with law.

In the light of the above, the notice issued under Section 148 of the Act dated 06.04.2022 shall not be enforced and further proceedings be initiated after compliance of the above directions.

With the above observations, both the instant appeal and the writ petition being 7824 of 2022 stand disposed of. Consequently, the connected application also stands disposed of.

