

Item no. 05

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 306 of 2023
+
IA NO.CAN 1 OF 2023

INDU GOENKA

vs.

ASSESSMENT UNIT, INCOME TAX DEPARTMENT & Ors.

Appearance:

For the Appellant : Mr. Abhratosh Mazumdar, Sr. Adv.
Mr. Avra Mazumdar
Mr. Ramesh Patodiya
Ms. Megha Agarwal.

For the Respondents : Mr. Smarajit Roychowdhury

Heard on : 16.03.2023

Judgment on : 16.03.2023

T.S. Sivagnanam J.:

1. This intra-Court appeal is directed against the order dated 30th January, 2023 passed in W.P.A. 1306 of 2023. In the said writ petition the appellant had challenged the assessment order dated 20th

December, 2022 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (for brevity the “Act”) on the ground that it is in total violation of the principles of natural justice and it has ignored all the formalities to be observed as enumerated under the Standard Operating Procedure (SOP) for faceless assessment orders. The learned Single Bench had dismissed the writ petition on the ground that the reasoning given by the assessing officer cannot be examined in a writ proceeding as the Court cannot act as an appellate authority. Questioning the correctness of the order, the appellant is before this Court by way of this intra-Court appeal.

2. We have heard Mr. Abhratosh Majumdar, learned senior counsel for the appellant and Mr. Smarajit Roy Chowdhury, learned senior standing counsel for the respondents.

3. At the first blush it may appear that the challenge is to the assessment order passed by the authority on the merits of the case. However, on a careful consideration of the entire facts and circumstances of the case, it is clear that the appellant has not questioned the merits of the assessment but the decision making process. The Standard Operating Procedure (SOP) under the Faceless Assessment framed under Section 144B of the Act had been issued by the National Faceless Assessment Centre, Delhi and communicated to all the Principal Chief Commissioners, Income Tax under the cover of a letter dated 3rd August, 2022. The procedure enumerates as to how the assessment has to be made and in paragraph N.1.3 it has been stated

that the authority should ensure adherence to the principles of natural justice and reasonable opportunity to the assessee, timelines to be given for obtaining response to the show cause notice which have also been stipulated. Further, the SOP also gives the format of final assessment order in AU-9 which sets out the various heads under which the assessment order has to be passed with due discussion.

4. On a cursory perusal of the assessment order dated 20th December, 2022, which is impugned in the writ petition, one gets an impression that it is in compliance with the SOP as it contains requisite sub-headings but however, on a closure reading of the assessment order it is found that the assessing officer has acted in a most perverse manner in passing the assessment order. We say so because the first 21 pages of the assessment order is a verbatim extract of the show cause notice. In page nos.22 and 23 in two paragraphs the reply given by the assessee has been summarized. From page nos.23 to 36 of the assessment order it is once again extract of the show cause and ultimately at page nos.37 and 38 the total income has been determined and the assessment is completed.

5. The impugned assessment order is a classical example as to how an assessment should not be made. The assessing officer has reduced the procedure to an empty formality, which has to be deprecated. This leaves us with no other option except to quash the assessment order. In the result, the appeal as well as the writ petition are allowed and the

assessment order dated 20th December, 2022 is quashed. Consequently, I.A. No. CAN 1 of 2023 is disposed of.

06. There shall, however, be no order as to costs.

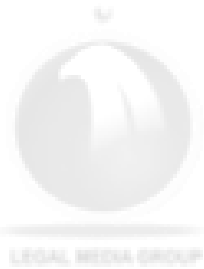
07. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

I agree.

(Hiranmay Bhattacharyya, J.)

RP/Pallab (AR. CT.)



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