

Power of reopening an assessment is a 'power' which should be exercised with adequate reason

The Hon'ble Calcutta High Court in *Pramod Kumar Madhogarhia v. The Union of India & Ors.* [MAT 729 of 2023 with I.A. No. CAN 1 of 2023 dated May 12, 2023] has set aside the Show Cause Notice ("SCN") issued under Section 148A(b) of the Income Tax Act, 1961 ("the IT Act"), the consequential orders and the order passed by the single bench dismissing the petition of the assessee, on the grounds that the opportunity of being heard provided at first instance should be an effective opportunity, since, the power of reopening an assessment is a 'power' which should be exercised with adequate reason.

Facts:

The Assessing Officer ("the AO") issued a SCN dated March 15, 2022 under Section 148A(b) of the IT Act, alleging that Mr. Pramod Kumar Madhogarhia ("the Petitioner") has entered into purchase transactions and the Petitioner was required to provide corroborative evidence and authentic details/documents to support such transactions.

In response to the SCN, the Petitioner submitted an interim reply dated March 17, 2022, stating about the nature of transactions and enclosed the ledger for reference. However, the Petitioner could not submit the bank statement due to lack of time, since the day when the reply was furnished on holiday.

Accordingly, the AO passed the order dated March 30, 2022 under Section 148A(d) of the IT Act, against which the Petitioner filed a petition before the Hon'ble Calcutta High Court. Meanwhile, during the pendency of the petition, the Assessment Order dated March 22, 2023 ("the Assessment Order") under Section 147 of the IT Act was passed. Subsequently, the petition was dismissed vide Order dated April 4, 2023 ("the Impugned Order") on the ground that the Assessment Order passed is an appealable order.

Being aggrieved, by the dismissal of the petition, the Petitioner had filed this intra-court appeal.

Issue:

Whether the Assessment Order and the Impugned Order have been passed by violating the principle of natural justice?

Held:

The Hon'ble Calcutta High Court in ***M.A.T No. 729 of 2023 with I.A. No. CAN 1 of 2023*** held as under:

- Stated that, there is a fundamental error in the decision making process because the source of the information has not been disclosed to the Petitioner nor as to on what basis the AO entertained such doubts with regard to the transactions.
- Noted that, 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 used for adequate reasons.
- Opined that, the time granted to the Petitioner to submit its reply especially when the source of information based on which the reopening proceedings were initiated having not been disclosed, was thoroughly inadequate, which had disabled the Petitioner from putting forth its submissions in a proper and effective manner.
- Observed that, the AO had not given an opportunity of hearing to the Petitioner, nor has specifically dealt with the correctness of the ledger, which were enclosed along with the interim reply to the SCN.
- Held that, there has been a violation of principle of natural justice.

- Set aside the order passed under Section 148A(d) of the IT Act, the Assessment Order and the Impugned Order.
- Restored the matter to the file of the AO at the stage of the SCN under Section 148A(b) of the IT Act.
- Directed the Petitioner, to submit comprehensive reply along with all document supporting claim.
- Further directed the AO, to give the relevant documents based on which the SCN was issued to the Petitioner.

Relevant provision:

Section 147 of the IT Act:

“Income escaping assessment.

147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.-For the purposes of assessment or reassessment or re-computation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.”

Section 148A of the IT Act:

“Conducting inquiry, providing opportunity before issue of notice under section 148.

148A. The Assessing Officer shall, before issuing any notice under section 148,-

.....

(b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

.....

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:”

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