18.09.2026
Item No.07
Ct. No. 10
BR

WPA 15197 of 2024

Jainco Transmission Limited
-vs-
The Assistant Commissioner of Income Tax Circle II (1), Kolkata and Ors.

Mr. Avra Majumder, ,
Ms. Alisha Das,
Ms. Rupomita Ghosh,
Ms. Maitreyee Naskar

.... For the petitioner

Mr. Soumen Bhattacharjee,
Mr. Rounak Seal
... for the respondent

1. The present writ petition has been filed , inter alia , challenging the order dated 16th April, 2024 issued under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the said Act) and the notice under Section 148 of the said Act dated 16th April, 2024 both in respect of the assessment year 2017-18.

2. The short point that falls for consideration in the instant writ petition is whether the approval granted under Section 151 of the said Act, by the sanction granting authority , in this case eing CCIT, Kolkata-2 can be said to be valid. By placing the approval granted under Section 151 of the said Act, Mr. Majumder, learned advocate representing the petitioner has claimed that the approval granting authority while grating the approval obviously did not consider the reply filed by the petitioner though, the petitioner had responded to the notice issued under Section 148A(b) of the said Act. He would submit that column NO. 15 of the aforesaid sanction order specifically records that the assessee did noyt file any response to the notice under Section 148A(b) of the said Act, though, the petitioner had in fact filed a response. According to him, the order passed by the assessing officer which is based on an approval issued by the sanction granting authority stands vitiated inasmuch as the sanction granting authority had granted the sanction without due application of mind. The above order cannot be sustained and should be set aside.

3. Mr. Soumen Bhattacharya, learned advocate appearing on behalf of the respondents although , has not placed before this Court the records of the case but has filed a short affidavit and has tried to justify the recording made in the column No. 15 of the sanction order issued under Section 151 of the said Act. According to him , ordinarily when a response to a notice under Section 148A9b) of the said Act is filed online, the same is reflected in the sanction order automatically without any human interference. However, in the event, if the response is filed manually , there is no such reflection in the order of the sanction granting authority. According to him, this is an unintentional error from an administrative oversight in the documentation process. The mistake was not deliberate. The same cannot have the effect of vitiating the above order inasmuch as the sanction granting authority had duly considerd the response.

4. Having heard the learned advocates appearing for the respective parties, I find from the disclosure made in the writ petition that the response to the notice under Section 148A(b) of the said Act was in fact filed, the same would corroborate from the order dated 16th April, 2024. Further in the sanction order though the sanction granting authority has recorded that he has considered the draft order, in my view, the same appears to be mechanical, as the same proceeds on the premise that no response was filed and there is also no reflection that he had considered the response.

5. Having regard to the above, this Court finds that while recommending the case, as a fit case for issuance of notice under Section 148, the sanction granting authority has only gone through the proposal of the AO and the materials on record, there is no reflection that the sanction granting authority had considered the response filed by the assessee. The above order appears to be mechanical. Since, the order under Seciton 148A(d) of the said Act was passed with the approval of the sanctioning authority, by reasons of the sanction being issued in a mechanical manner, the above order under Section 148A(d) of the said Act, also sands vitiated. The same cannot be sustained and the same is set aside.

6. Consequently, the notice issued under Section 148 of the said Act for the assessment year 2017-18 is also set aside. This shall , however, not impede upon the rights of the respondents to initiate proceedings afresh by notice from the stage of receipt of the response filed by the petitioner. The authority while disposing of the proceedings shall consider the response filed by the petitioner in accordance with law . For the purpose of limitation for passing the order under Section 148A(d), the period of one month shall commence when the notice in this regard is issued by the jurisdictional assessing officer provided , the notice is issued within a period of four months from date.

7. It is made clear that this Court has not gone into any other points raised by the petitioner and all other points are kept open. It is also made clear that if the petitioner is entitled to and seek for any additional document , the same shall be made over if found eligible.

8. With the above observations an directions, the writ petition is disposed of.

9. There shall be no order as to costs.

10. Urgent Photostat certified copy of this order , if applied for , be made available to the parties upon compliance of requisite formalities.

(Smita Das De, J.)