

Item no. 38

**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 1245 of 2021
with
IA No. CAN 1 of 2021

Pradip Kumar Saha
vs.
Union of India & ors.

For the Appellants : Mr. Himangshu Kr. Ray

For the Respondents : Mr. Samarjit Roy Chowdhury
Mr. Arunava Ganguly

Heard on : 17.12.2021

Judgment on : 17.12.2021.

T.S. Sivagnanam J.:

This appeal has been filed by the assessee is directed against the order dated 11.11.2021 passed by the learned Single Judge in WPA 16497/2021 challenging the faceless assessment proceedings on the ground of violation of principles of natural justice. The said writ petition is pending before the learned Single Judge but the prayer for

interim relief was not granted and direction was given to the respondents to file affidavit-in-opposition. Aggrieved by the same, the appellant is before this Court.

We have heard learned counsel for the parties. Learned counsel on either side submitted that the main writ petition itself can be disposed of as the issue lies in a narrow canvass. In the light of the said submission, we take up the matter for consideration of the prayer sought for in the writ petition. The appellant writ petitioner in the said writ petition has sought for cancellation of the order dated 08.09.2021 and the notice of demand dated 08.09.2021 as also the order imposing penalty by notice dated 08.09.2021.

The facts are that on 11.09.2021 the appellant writ petitioner received a notice dated 06.09.2021 from the second respondent. The said notice was sent from the Office of the third respondent through speed post. In the said notice dated 06.09.2021, the second respondent appears to have stated that National Faceless Assessment Centre (NFAC) has not received any response in the case of Mr. Pradip Kumar Saha, the appellant herein in respect of certain notices sent. The appellant was not granted opportunity of filing reply to the draft assessment order and seven days time was granted.

The case in hand is that the appellant came to know of the notice for the first time on 11.09.2021 at 14.19 hours and received the same by speed post but the appellant's accountant entered the online portal to submit reply to the show cause notice dated 23.08.2021 and

other notices which were enclosed and by that time the appellant found that the second respondent had passed the assessment order dated 08.09.2021 and raised demand by imposing penalty. The facts appeared to be not in dispute that the Department may contend that earlier notices were issued. The fact remains that having granted a final opportunity of fixing a time limit, the time limit should commence to run from the date of the receipt of the notice and if that be so, the date should be computed from 11.09.2021 and it will expire on 17.09.2021. Therefore, completing the assessment well before the said time is not sustainable and it is in violation of principles of natural justice. The decision in the case of **Renew Power (P) Ltd. vs. National E-Assessment Centre Delhi** reported in [2021] 128 taxman.com 263 (Delhi) would also support the case of the appellant.

Thus, for the above reasons, the instant appeal is **allowed** and the connected application is **disposed of**. Consequently, the writ petition is allowed and the assessment order dated 08.09.2021 and the notice of the demand dated 08.09.2021 as well as the penalty notice dated 08.09.2021 are quashed and the matter is remanded to the respondents for granting fresh opportunity to the appellant for filing reply/objection to the draft assessment notice and, thereafter, to take a decision on the merit.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava