<u>Court No. - 3</u>
Case :- WRIT TAX No. - 1214 of 2021
Petitioner :- Jagran Prakashan Limited
Respondent :- Assessing Officer Income Tax And 2 Others
Counsel for Petitioner :- Ritvik Upadhya
Counsel for Respondent :- Gaurav Mahajan

<u>Hon'ble Surya Prakash Kesarwani,J.</u>
<u>Hon'ble Jayant Banerji,J.</u>

1. Heard Shri V.K. Upadhya, learned Senior Advocate assisted by Shri Ritvik Upadhya, learned counsel for the petitioner and Shri Gaurav Mahajan alongwith Sri Krishna Agarwal, learned Standing Counsel for the Income Tax Department.

2. On 09.02.2022, this Court passed the following order:-

"This writ petition has been filed praying for the following relief:

"i) issue a suitable writ, order or direction in the nature of certiorari calling for the record of the case and to quash the impugned order dated 30.11.2021 passed by the respondent no. 1 purporting to decide the objections of the petitioner preferred against the impugned notice dated 31.03.2021 u/s 148 of the Income Tax Act, 1961 (Annexure-15 to this writ petition).

ii) Issue a suitable writ, order or direction in the nature of certiorari calling for the record of the case and to quash the impugned notice dated 30.11.2021 issued by the respondent no. 1 u/s 143(2) r/w section 147 of the Income Tax Act, 1961 (Annexure-16 to this writ petition).

iii) Issue a suitable writ, order or direction in the nature of certiorari calling for the record of the case and to quash the impugned notice dated 31.03.2021 issued by the respondent no. 1 under section 148 of the Income Tax Act, 1961 (Annexure No. 1 to this writ petition)."

Perusal of the impugned order dated 30.11.2021 reveals that it has been passed by the respondent no. 1 in gross disobedience of the order of this Court dated 6.8.2021 in Writ Tax No. 510 of 2021, whereby, the respondents were directed that "on the date fixed, the objections may be decided either upon **physical hearing** or through **virtual proceeding**, through **online mode**. The petitioner would be given adequate opportunity of hearing to press his objection and submit its response to queries that may arise. **Upon such proceeding being complied on the date fixed**, a reasoned order may be passed by the authority that has **heard the objections** and the same may be communicated to the petitioner within two weeks therefrom".

For ready reference, the order dated 6.8.2021 passed in Writ Tax No. 510 of 2021 (Jagran Prakashan Limited Vs. Assessing Officer, Income Tax, Special Range and 2 others) is reproduced below:

"Heard Sri Vinod Kumar Upadhya, Senior Advocate assisted by Sri Ritvik Upadhya, learned counsel for the petitioner and Sri Manu Ghildiyal, learned counsel for the respondents.

Challenge has been raised to the re-assessment proceedings initiated against the petitioner for the assessment year 2015-16 vide notice dated 31st March, 2021.

Undisputedly, the said notice came to be issued by respondent no.1, Assessing Officer, Income Tax, Special Range, Kanpur. In response to that notice, petitioner filed return through e-mode on 26.05.2021. Subsequently, on its further request, the petitioner was supplied the "reasons to *believe", to initiate the re-assessment proceedings by email communication dated 09.06.2021, along with the approval order issued by the Principal Commissioner, under section 151 of Income Tax Act, 1961 (hereinafter referred to as 'the Act').*

In response to the same, the petitioner has filed its written objection to the initiation of the re-assessment proceeding, vide objection dated 28.06.2021 filed on 29.06.2021 before the respondent no.1. Thus, the re-assessment proceedings are stated to be pending.

Undisputedly, in view of the decision of the Supreme Court as regularly followed by this Court by way of procedural principle, the Court does not directly entertain the challenge to re-assessment proceeding before disposal of the objection filed by the assessee to the initiation of such re-assessment proceeding. Thus the principle enunciated by the decision of Supreme Court in the case of ***GKN Driveshafts (India) Ltd. vs Income Tax Officer and another, 2003(259) ITR 19 (SC)*** *has been consistently applied by this Court.*

In view of above, we consider it proper that the assessee's objection dated 28.06.2021 filed on 29.06.2021 may be decided by its assessing authority before proceeding to issue any further notice to conduct the re-assessment proceeding.

Since under the faceless scheme the assessee is not aware of the identity or location of the assessing authority, the writ petition is ***disposed of*** *with the following directions;*

(i). Within one week from today, the petitioner shall file a physical copy of this order along with covering application before the respondent no.1 to inform him about this order and the compliance to be made.

(ii) Upon such compliance being made by the petitioner, a notice may be issued by the concerned authority within a week thereafter. It may be served on the petitioner fixing a date to decide the objection dated 28.06.2021. At least two weeks notice may be given before the date fixed.

(iii) On the date fixed, the objections may be decided either upon physical hearing or through virtual proceedings, through online mode. The petitioner would be given adequate opportunity of hearing to press his objection and submit its response to queries that may arise.

(iv) Upon such proceeding being complied on the date fixed, a reasoned order may be passed by the authority that has heard the objections and the same may be communicated to the petitioner within two weeks therefrom.

In case the objections are rejected, the re-assessment proceedings may be fixed on any date two weeks after the date of communication of the order dealing with the objections filed by the petitioner.

Needles to add that we have not examined the merit of the challenge which may remain open to be raised at the appropriate stage."

As per impugned order dated 30.11.2021, a notice dated 25.11.2021 was issued by the respondent no. 1 granting time to submit reply/objection upto 10.12.2021. The petitioner on the very next day i.e. 26.11.2021 requested in writing before the respondent no. 1 to afford opportunity of physical hearing in compliance of the order of the High Court. Relevant portion of the order of the High Court was also referred in the aforesaid application dated 26.11.2021. In the impugned order, the Assessing Authority specifically noted and quoted the order of this Court dated 6.8.2021 and deliberately, without affording any opportunity of personal hearing either physical or virtual through online mode, passed the impugned order dated 30.11.2021. Thus, prima facie, the respondent no. 1 has deliberately disobeyed the order of this Court and passed the impugned order in breach of principles of natural justice.

For the brief reasons noted above, we direct the respondent nos. 1 and 2 to file their personal affidavits showing cause that why the impugned order dated 30.11.2021 has been passed by the respondent no. 1 without affording any opportunity of hearing either physical or virtual through online mode, in defiance of the order of this court dated 6.8.2021 passed in Writ Tax No. 510 of 2021. The respondent no. 1 shall also show cause as to why exemplary costs may not be imposed upon her to be recovered from her salary. In the event this order is not complied with on or before the next date fixed, the respondent no. 1 and 2 both shall remain present in person before this Court and shall further show cause for non-compliance of this order.

Put up as a fresh case on 15.2.2022.

As an interim measure, it is provided that till the next date fixed, the respondent no. 3 shall not proceed with reassessment proceedings pertaining to assessee for the assessment year in question".

3. Today affidavit of compliance of respondent no.1 and also respondent no.2 have been separately filed, which both are taken on record.

4. In para 9 and 10 of the personal affidavit, the respondent no.1 has stated:-

"9.That the deponent during the course of discussions with other Assessing Officers regarding delay in making compliance of the directions issued by the Hon'ble High Court was informed that non compliance would invite contempt of Court. Since there had already been a delay in the present case as such of fear of contempt the deponent proceeded to decide the objections on the basis of the reply of the petitioner dated 26.11.2021 and the objections dated 01.07.2021.

10. That the deponent most humbly and respectfully admits that opportunity of personal hearing as directed by this Hon'ble Court has not been afforded to the petitioner in the facts and circumstances of the case. The deponent most humbly submits that there was neither any malafide intention or any deliberate/willful disobedience of the direction of the Hon'ble Court on the part of the deponent and for this unintentional and inadvertent error of judgment/mistake on the part of the deponent, the deponent with folded hands prays before this Hon'ble Court for pardon and forgiveness for which the deponent shall forever be grateful to the Honble Court for this act of kindness".

5. Since it has been admitted by the respondent no.1 that the impugned order was passed in breach of the direction of this Court dated 06.08.2021 in Writ Tax No.510 of 2021 and principles of natural justice were not followed, therefore, the impugned order dated ***30.11.2021 is quashed.*** Liberty is granted to the respondent no.1 to pass order afresh in accordance with law in terms of the order dated 06.08.2021 passed in Writ Tax No. 510 of 2021, after affording reasonable opportunity of hearing to the petitioner.

6. In view of the apology tendered by the respondent nos.1 and 2 in their personal affidavit, cost is not being imposed.

7. In view of the above, writ petition is ***allowed.***

Order Date :- 15.2.2022

T.S.