



'C.R.'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 12TH DAY OF JANUARY 2024/22ND POUSHA, 1945

W.A.NO.34 OF 2024

AGAINST THE JUDGMENT DATED 17.10.2023 IN W.P(C).NO.12595/2023
OF HIGH COURT OF KERALA

APPELLANT(S)/RESPONDENT:

THE INCOME TAX OFFICER,
WARD-2, ALUVA, PIN - 683101.

BY SRI.JOSE JOSEPH, SC
BY ADV.SRI.CYRIAC TOM

RESPONDENT(S)/PETITIONER:

ASAMANNOOR SERVICE CO-OPERATIVE BANK LTD,
NO.317, ASAMANNOOR, ERNAKULAM,
REPRESENTED BY ITS SECRETARY KIRAN P.ASHOK,
PAN AAAAT6857F, PIN - 683549

BY ADV.SRI.PREMJIT NAGENDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
12.01.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**'C.R.'****J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

The Revenue is in appeal before us impugning the judgment dated 17.10.2023 of a learned Single Judge in W.P.(C).No.12595 of 2023. Since a detailed narration of the facts of the petitioner's case in the writ petition is given in the impugned judgment, we choose not to reiterate those in this judgment since the appeal of the Revenue lies in a very narrow compass.

2. In the writ petition, the challenge of the writ petitioner was to Ext.P5 order passed by the Income Tax Officer Ward-2, Aluva, in terms of Section 148A(d) of the Income Tax Act [hereinafter referred to as the 'IT Act'] and the consequential notice [Ext.P6] issued to the writ petitioner by the said Officer under Section 148 of the IT Act proposing a re-assessment of the income for the assessment year 2019-20.

3. The grievance of the writ petitioner was that while the appellant herein had issued the notice under Section 148A(b) of the IT Act [Ext.P3] calling upon it to show cause as to why a notice under Section 148 should not be issued, and the petitioner had, by Ext.P4 reply, re-iterated that it had no taxable income and was



therefore advised not to file a return of income as there was no income that had escaped assessment, the appellant herein proceeded to pass Ext.P5 order without affording the petitioner an opportunity of being heard as mandated under Section 148A(b) of the IT Act. It was therefore contended that Ext.P5 order was vitiated on account of the non-compliance with the rules of natural justice, and consequently, Ext.P6 notice too was vitiated in law.

4. The learned Single Judge found that inasmuch as Section 148A of the IT Act contemplated the provision of an opportunity of being heard to the assessee, the non-providing of a personal hearing to the assessee vitiated the impugned order and consequential notice. The said order and notice were therefore quashed, and the writ petitioner directed to appear before the appellant herein on or before 27.10.2023 with all relevant documents in its possession for being heard. It was further made clear that if the petitioner did not appear on 27.10.2023, no further opportunity needed to be granted to it by the Income Tax Officer.

5. The appeal by the Revenue is premised on the contention that the express provisions of Section 148A speak of providing an opportunity of being heard by serving upon the assessee a notice to show cause within such time as may be specified in the notice being not less than seven days. The contention, in other words, is that so long as the show cause notice envisaged in Section 148A is issued



to the assessee, the opportunity of being heard is to be seen as provided. Reliance is placed on the decisions in **Union of India (UOI) v. Jyoti Prakash Mitter - [(1971) 1 SCC 396]** and **Union of India (UOI) and Ors. v. Jesus Sales Corporation - [(1996) 4 SCC 69]**.

6. Per contra, it is the submission of the respondent/writ petitioner that the object of Section 148A of the IT Act was to enable the assessee to have an effective opportunity of clarifying its position *vis-a-vis* the allegations in the show cause notice before the authority that issued the said notice, and hence, the providing of a personal hearing was necessary to comply with the object of the statutory provision.

7. We have heard Sri.Jose Joseph, the learned Standing Counsel for the appellant and Sri.Premjit Nagendran, the learned counsel for the respondent/writ petitioner.

8. On a consideration of the rival submissions, we find ourselves unable to accept the contentions of the appellant.

9. Section 148A of the IT Act reads as follows:

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

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;



- (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);
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- (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;

Provided that the provisions of this section shall not apply in a case where,-

- (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or
- (b) the Assessing Officer is satisfied, with the prior approval of the Principal commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein relate to, the assessee; or
- (d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

Explanation.- For the purposes of this section, specified authority means the specified authority referred to in section 151.”

It is clear from a reading of the statutory provision that while there is an obligation on the Revenue to provide an opportunity of being heard to the assessee by serving upon the assessee a show cause



notice specifying the time by which he should prefer a reply, the service of the show cause notice by itself does not tantamount to a discharge of the obligation to provide the assessee with an opportunity of being heard, as contended by the Revenue. On the contrary, the service of show cause notice is only the first step in the process of extending an opportunity of being heard to the assessee and the purpose of the show cause notice is to confine the deliberations that are to follow to only those matters that are specified in the notice. If the obligation of the Revenue to provide an opportunity of being heard was to come to an end with the mere issuance of the show cause notice, then there would be no meaning in the assessee filing a reply to the show cause notice for the Revenue would then contend that the consideration of the reply of the assessee was not contemplated under the statutory provisions. Such a contention, if accepted, would tantamount to doing violence to the language of the statutory provision as well as its averred object of ensuring fairness in action.

10. In our view, the opportunity of hearing to be effective must involve a consideration of the reply to the show cause notice by the Income Tax Officer and also permitting the assessee to persuade the Income Tax Officer to see his point of view in the matter through the grant of a personal hearing where the assessee would be in a position to do so. In other words, a personal hearing would be required for an assessee to try and convince the Income



Tax Officer of his point of view in regard to the issue flagged in the show cause notice.

11. The merit of an oral hearing lies in that the assessee can discern on what aspects of the controversy more light is needed. Thus, if an oral hearing can complement and perfect the written submissions in a case that can be decided in a myriad ways depending on the perspective that the adjudicator chooses to adopt, then it should not be dispensed with. It may be profitable in this context to refer to the off-quoted passage from the judgment of *Tucker L.J.* in **Russel v. Duke of Nortfolk - [(1949) 1 All ER 109 (CA)]** where it was observed that:

“There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.”

12. Thus, while deciding whether or not a statutory provision mandates the grant of a personal hearing, the approach of the court must be *“pragmatic rather than pedantic; realistic rather than doctrinaire, functional rather than formal and practical rather than precedential.”* [Per Mukharji, C.J. in *Charan Lal Sahu v. Union of India - [(1990) 1 SCC 613]*].



13. In view of the above discussion, we are of the view that the decision in **Union of India (UOI) and Ors. v. Jesus Sales Corporation - [(1996) 4 SCC 69]** that is relied upon by the appellant and which interpreted a statutory provision that did not provide for an opportunity of being heard to an applicant seeking the benefit of a duty exemption scheme, cannot come to the aid of the appellant herein in his attempt to show that the provisions of Section 148A of the IT Act should be interpreted in a like manner. As is apparent from a reading of that judgment, the court came to the conclusion that it did on finding that the statutory provision concerned did not provide for the grant of a personal hearing. It was under those circumstances that the court found that the statutory appellate authority in that case was not legally obliged to grant a personal hearing when the same was not envisaged in the statutory provision. As already noted above, the express provisions of Section 148A of the IT Act contemplate that the assessee should be granted an opportunity of being heard, and the question arising in this appeal is only whether that opportunity to be effective must include a right to a personal hearing as well. In our opinion, it should.

14. Before we conclude, we might also note that by an amendment to the provisions of Section 148A(b) through the Finance Act, 2022 with effect from 1.4.2022, the requirement of providing an opportunity of being heard to the assessee was made



less rigorous by omitting the requirement of obtaining a prior approval of the specified authority before granting that opportunity. The deletion of the said pre-condition is a further indication that the relaxation of the statutory requirement of obtaining a prior approval of the specified authority was intended to simplify the procedure for granting an opportunity of being heard to the assessee. In our view, this statutory exercise fortifies our interpretation of the provision as requiring the providing of an opportunity of personal hearing as an integral component of the opportunity of being heard granted to the assessee.

In the result, we find no merit in the contentions raised by the appellant in this writ appeal, and for the reasons stated in this judgment, we dismiss the Writ Appeal as devoid of merit.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

prp/