IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7911 of 2022

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Shalini Jha, Wife of Ravish Kumar, Getwel Hospital, Compound, Raza Bazar, B V College, Bailey Road, P.s. Shastri Nagar, Patna, currently resident of A-804, Bay Bliss, Plot No. 4, Sector-9, Ulwe, Navi Mumbai, Maharashtra-410 206.

... ... Petitioner/s

Versus

1. The Union of India, Ministry of Finance, through the Income Tax Department, New Delhi.
2. Principal Commissioner of Income Tax-1, Patna, address-Ist Floor, C.R. Building, Birchand Patel Marg, Patna-800001.
3. Income Tax Officer, Ward No. 6(1), Patna, C.R. Building, Birchand Patel Marg, Patna-800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh, Advocate Mr.Subhash Kumar, Advocate
For the Respondent/s	:	Mrs. Archana Sinha, Advocate Mr. Alok Kumar, Advocate Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-06-2022

Petitioner has prayed for the following relief(s):-

> "I. For issuance of a writ in the nature of certiorari for quashing of the order dated 30.03.2022 passed by the Income Tax Officer, Ward No. (1), respondent no. 3 for the assessment year 2018-19 under section-148-A(d) of the Income Tax Act, 1961 (hereinafter I.T.Act, 1961") by which it has been ordered that the petitioner has concealed the income of Rs. 27,63,000/- i.e. the money payment over and above payment of Rs. 45,50,000/- and thus information suggests that an amount of Rs. 73,13,000/- is an escaped assessment and is a fit case

for issue notice under section-148 of the I.T.Act, 1961; on the ground that the procedure adopted to make an assessment is without any justification, without jurisdiction etc;

II. For issuance of a writ in the nature of certiorari for quashing of the notice under section-148 of the I.T.Act, 1961 dated 30.03.2022 issued by the Income Tax Officer, Ward No (1), respondent no. 3 for the AY-2018-19 by which direction has been given to furnish the returns of income for the assessment year 2018-2019; on the ground that the order passed under section-148 of the I.T.Act, 1961 is itself illegal and incorrect in the eye of law;

III. For issuance of a writ in the nature of certiorari for quashing of the notice dated 27.09.2021, 16.02.2022 and 22.03.2022 for the assessment year 2018-19 issued by the Income Tax Officer, Ward No (1), respondent no. 3 by which the petitioner was asked to give reply to the notice issued under section-148-A of the I.T.Act, 1961 on the ground that the petitioner is staying at Mumbai and have been filing her Income Tax Return at the jurisdiction of Mumbai since A.Y-2019-20 onwards as evident from the e-filing portal;

IV. For issuance of a writ or order or direction restraining the respondent no. 3 from making any subsequent action pursuant to the notice issued under Section 148 of the I.T.Act, 1961 as contained in the order under Section 148-A(d) dated 30.03.2022 during the pendency of the present writ application.

V. For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

In the attending facts and circumstances, we are inclined to allow the present petition, more so, on the ground that petitioner was not afforded adequate opportunity inasmuch as no opportunity of filing reply within seven days, as contemplated under Section 148A of Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), is stipulated.

We notice that in the instant case, notice was issued on 22.03.2022, directing the petitioner to respond on or before 28.03.2022. No doubt, petitioner did respond but then the obligation cast upon the officer to afford “7 clear days”, as is so stipulated in the section, was never afforded to the petitioner. The language of the section is unambiguously clear. There is a mandate to the officer to provide opportunity to the petitioner of filing response and such period being “not less than” seven days.

We notice that the respondent authority passed the order on 30.03.2022 which also only exhibits undue haste in passing the order against the assessee.

We are persuaded by learned counsel for the petitioner, to take the aforesaid view also on the strength of the decision dated 12th May, 2022 rendered by Delhi High Court in W.P.(C) 7385 of 2022, titled as **Shri Sai Co-operative Thrift and Credit Society Ltd. Vs. The Income Tax Officer, Ward 43-6**.

Accounting for all the attending facts and circumstances, the order dated 30.03.2022, passed by respondent no.3, namely, the Income Tax Officer, Ward-6(1), Patna, C.R. Building, Birchand Patel Marg, is set aside with the authority to issue a fresh notice within 15 days in terms of Section 148 of the

Income Tax Act, 1961 and complete the appropriate proceedings in accordance with law.

Petitioner through learned counsel undertakes to fully co-operate and respond to the notice within the period stipulated under Section 148A of the Act and/or the period specified in the notice.

The officer concerned shall pass an order within a period of two months thereafter.

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	29.06.2022
Transmission Date	