IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5460/2022

Agriculture Produce Market Committee, Khamgaon,
Through its Authorized Signatory Ratan Rathi,
Aged Major, Occ.: Chartered Accountant,
Resident of Khamgaon, District Buldana. **PETITIONER**

-VERSUS-

1. Income Tax Officer, Ward-1,
Khamgaon, District Buldana.

2. Principal Chief Commissioner of Income
Tax-1, Ayakar Bhavan, Civil Lines, Nagpur. **RESPONDENTS**

Shri Deepak Gupta, counsel for the petitioner.
Shri Anand Parchure, counsel for the respondents.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.
DATE : OCTOBER 17, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 31.03.2022 issued under Section 148A(d) of the Income Tax Act, 1961 (for short, 'the Act of 1961'). It is submitted by the learned counsel for the petitioner that the notice under Section 148A(b) of the Act of 1961 was issued on 23.03.2022 and reply was sought from the petitioner on or before 31.03.2022. The petitioner submitted its reply on 31.03.2022 and on the same day the impugned order came to be passed on 10.41 p.m. after obtaining approval of the Principal Chief Commissioner of Income Tax-1. According to the petitioner the impugned order does not consider the petitioner's reply dated 31.03.2022.

3. On perusing the writ petition and the documents filed alongwith it as well as the reply filed on behalf of the respondents it becomes clear that the petitioner had responded to the notice dated 23.03.2022 and its reply is dated 31.03.2022. Before passing the order under Section 148A(d) of the Act of 1961 it is necessary to obtain approval of the Principal Chief Commissioner of Income Tax. The record indicates that such approval though stated to be obtained the impugned order has been passed at 10.41 p.m. This indicates that the reply filed by the petitioner to the notice has not been taken into consideration especially in view of the fact that such reply was filed on 31.03.2022.

4. We find that a somewhat similar question was considered by this Court in **Writ Petition No. 2154 of 2022** [*Samadha Corporation (Partnership Firm) Versus Income Tax Officer, Ward No.5(3), Nagpur & Another*] decided on 20.09.2022. Given the aforesaid facts, we are of the view that the impugned order passed under Section 148A(d) of the Act of 1961 has been issued without considering the petitioner's reply inasmuch as paragraph 1 of the said order records that the petitioner failed to submit its explanation. In view of aforesaid the impugned order dated 31.03.2022 passed under Section 148A(d) of the Act of 1961 is set aside. The respondents are at liberty to take further steps in accordance with law and as permissible under the said Act.

5. The writ petition is disposed of in aforesaid terms. Rule accordingly. No costs.

(**M.W. CHANDWANI, J.**) (**A.S. CHANDURKAR, J.**)

APTE