IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.10946 of 2022
and
W.M.P.Nos.10539 & 10540 of 2022

Makkini Govindarajulu Baskaran ... Petitioner

Vs

The Assistant Commissioner of Income Tax
Non-Corporate Circle 22(1)
Tambaram
Chennai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records pertaining to the order dated 29.03.2022 made in ITBA/AST/F/148A/2021-22/1041985537(1) on the file of the Assistant Commissioner of Income Tax, Non-Corporate Circle 22 (1), Tambaram, Chennai, the respondent herein and quash the same.

For Petitioner : Mr.S.Saravanakumaran

For Respondent : Mr.D.Prabhu Mukunth Arunkumar
Junior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari, calling for the records pertaining to the order dated 29.03.2022 made in ITBA/AST/F/148A/2021-22/1041985537(1) on the file of the Assistant Commissioner of Income Tax, Non-Corporate Circle 22 (1), Tambaram, Chennai, the respondent herein and quash the same.

2. In respect of the Assessment Year 2018-19, the Revenue wanted to reopen the assessment under Section 147 of the Income Tax Act, 1961 [in short, 'the Act']. Therefore, before issuance of notice under Section 148 of the Act, they wanted to exhaust

the procedures contemplated under Section 148A of the Act. Therefore, a notice under Clause (b) of Section 148A of the Act was issued on 18.03.2022, wherein, time was given to the petitioner/assessee to respond on or before 23.03.2022. Since the time granted is very minimal, the petitioner/assessee though made an attempt to give a reply on 23.03.2022, that could not be made possible. Therefore, in the meanwhile on 29.03.2022, the order has been passed under Clause (d) of Section 148A of the Act, disposing the said proceedings, thereby decided to invoke Section 148 of the Act to issue a notice towards processing the assessment under Section 147 of the Act. Challenging the said order passed under Clause (d) of Section 148A of the Act dated 29.03.2022, the present writ petition has been filed.

3. Heard Mr.S.Saravanakumaran, learned counsel appearing for the petitioner/assessee, who pointed out that, if at all an order to be passed under Clause (d) of Section 148A of the Act, notice under Clause b should be issued, where, the notice not less than 7 days atleast i..e, minimum 7 days to be given with a maximum of 30 days notice. Here in the case on hand, on 18.03.2022, notice was issued, giving time only on 23.03.2022. Therefore, it is not even the minimum 7 days provided. Therefore, the very initiation of notice under Clause (b) of Section 148A of the Act itself is vitiated as the mandatory minimum 7 days has not been provided.

4. Because of which, according to the learned counsel for the petitioner, though an attempt has been made to prepare the reply and give it to the Revenue on 29.03.2022, that could not be materialized. With the result, without the reply being filed or considered, the order under Clause (d) of Section 148A of the Act was issued. Hence, the order is also equally vitiated, he contended.

5. Per contra, Mr.D.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel appearing for the Revenue would submit that, a notice was issued on 18.03.2022, giving time upto 23.03.2022. Within the said time, the petitioner was able to prepare the reply and he claims that it has been made an attempt to send reply through E-mail ID. If that being so, he cannot take a ground that, minimum time of 7 days since has not been given, he could not file the reply. Therefore, even though the 7 days minimum time has been prescribed under Clause (b) of Section 148A of the Act, in the present case, the said defence taken may not be justifiable in view of the factual matrix of the case, he contended.

6. I have considered the said submissions made by the learned counsel appearing on both sides and have perused the materials placed before this Court.

7. It is a settled proposition that, under a Statute, if particular thing has to be done in a particular manner, that should be only done in such manner not otherwise.

8. Here in the case on hand, if at all notice to be issued under Clause (b) of Section 148A of the Act, minimum 7 days time should be given. Here in the case on hand, admittedly, less than 6 days time was given through the notice issued by the Revenue dated 18.03.2022.

9. Within the said time, even though an attempt was made by the petitioner/assessee to make the reply through E-mail on 29.03.2022, that has not reached the Revenue. Therefore, the Revenue proceeded to pass the impugned order under Clause (d) of Section 148A of the Act. Therefore, the impugned order, no doubt, is vitiated because of the mandatory minimum 7 days has not been given in this case. On that ground, this Court has no hesitation to hold that the impugned order is unsustainable. Accordingly, this Court is inclined to interfere with.

10. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

(i) That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. During reconsideration process, taking the notice dated 18.03.2022 as a fresh notice under Clause (b) of Section 148A of the Act, it is open to the petitioner/assessee to respond by giving a detailed reply with input whatever, within a period of 15 days from the date of receipt of a copy of this order and if such a reply is filed within the time stipulated, it is open to the Revenue to pass orders under Clause (d) of Section 148A of the Act.

11. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Income Tax
Non-Corporate Circle 22(1)
Tambaram
Chennai.

+1cc to M/s.Hema Murali Krishnan, Advocate, S.R.No.29229

+1cc to Mr.M.Velmurugan, Advocate, S.R.No.29304

W.P.No.10946 of 2022

MG(CO)
SU(23/05/2022)