IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NO.9835 OF 2022
AND
W.M.P.NOS.9542, 9543 & 9544 OF 2022

UNIFI Capital Private Limited,
No.11, Kakani Towers,
15, Khader Nawaz Khan Road,
Nungambakkam, Chennai - 600 006.
Represented by its Director,
Narendranath.K. ... Petitioner

-Vs-

The Income Tax Officer,
Corp Ward 6(1), Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ... Respondent

PRAYER:-

Writ Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the file of the respondent and quash the impugned order under Section 148A(d) of the Income Tax Act, 1961, dated 29.03.2022 in DIN & Notice No:ITBA/AST/F/148A/2021-22/1041985851 (1) and the consequential notice u/s.148 dated 29.03.2022 in ITBA/AST/S/148_1/2021-22/ 1041993876(1) for the Assessment Year 2018-19.

For Petitioner : Mr.V.Vikram
For Mr.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.A.N.R.Jayapratap
Junior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records on the file of the respondent and quash the impugned order under Section 148A(d) of the Income Tax Act, 1961 dated 29.03.2022 in DIN & Notice No:ITBA/AST/F/148A/ 2021-22/1041985851(1) and the consequential notice u/s.148 dated 29.03.2022 in ITBA/AST/S/148_1/2021-22/1041993876(1) for the Assessment Year 2018-19.

2. In respect of the Assessment Year 2018-19 against the petitioner assessee, the respondent Revenue wanted to reopen the assessment under Section 147 of the Income Tax Act, 1961 (in short 'the Act'). Hence, before issuing notice under Section 148 of the Act, they wanted to exhaust the procedure contemplated under Section 148A of the Act. Accordingly, notice under Clause (b) of Section 148A of the Act was issued on 16.03.2022 directing the petitioner to give reply on or before 26.03.2022.

3. On receipt of the said notice, the petitioner assessee on 23.03.2022 sought one week time to reply. Though the said request having been made and was registered in the web portal, no specific reply had been given by the Revenue extending the time.

4. Nevertheless, the petitioner had given reply on 28.03.2022 which was received and acknowledged by the respondent, however on 29.03.2022, order was passed by the Revenue stating that, no reply had been filed, therefore, there can be no objection from the petitioner for issuing notice under Section 148 of the Act and accordingly, on the same date i.e., on 29.03.2022, notice under Section 148 was issued.

5. Therefore, challenging the order dated 29.03.2022 passed under Clause (b) of Section 148A of the Act, this present Writ Petition has been filed.

6. Heard Mr.V.Vikram, learned counsel for the petitioner assessee, who having reiterated the aforesaid factual matrix, would seek indulgence of this Court on the ground that, if the petitioner's reply dated 28.03.2022 is considered and thereafter, if they pass an order, that would satisfy the petitioner's case, in the impugned order, the Revenue has stated that the petitioner has not even replied to the show cause notice.

7. Heard Mr.A.N.R.Jayapratap, learned Junior Standing Counsel appearing for the respondent Revenue, who would submit that, time was given in the notice dated 16.03.2022 upto

26.03.2022, before which, since no reply was given, on 29.03.2022 the order impugned was passed. Therefore, the reason cited in the order that, no reply had been given by the petitioner assessee is to be sustained and therefore, the impugned order does not warrant any interference from this Court.

8. I have considered the rival submissions made by both sides and have perused the materials placed before this Court.

9. Though time was given upto 26.03.2022 to give a reply, just few days of additional time sought for i.e., one week time from 26.03.2022 was sought for and that request was also registered in the web portal, therefore, it can be presumed that the said request has been made.

10. As per the said request within the one week time i.e., on 28.03.2022, a reply had been filed and the same also has been acknowledged by the Revenue stating that it is an acknowledgment, for which, e-proceedings response. Despite these factors, since the impugned order on 29.03.2022 was passed stating the reason that, the petitioner assessee has not given reply, in the considered opinion of this Court, may not be justifiable as that would amount to violation of Principles of Natural Justice.

11. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

> (i) That the impugned order is set aside and the matter is remitted back to the respondent, where the reply given by the petitioner dated 28.03.2022 shall be considered by the Revenue and in this regard, if need arises, an opportunity of being heard should be given to the petitioner within two weeks from the date of receipt of a copy of this order and thereafter, the Revenue can proceed and pass final orders.
>
> (ii) Till such final order is passed, the notice issued under Section 148 of the Act dated 29.03.2022 shall be kept in abeyance.
>
> (iii) It is needless to mention that, depending upon the outcome of the final order to be passed, as indicated above, the further course of action either to proceed with Section 148 or to withdraw the same can also be taken by the Revenue.

12. With these orders, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Anu/Sgl

To

The Income Tax Officer,
Corp Ward 6(1), Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.28067
+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.28589

W.P.NO.9835 OF 2022

SKM(CO)
PBS/12/07/2022