IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.10193 of 2022
and W.M.P.Nos.9890, 9892 & 9893 of 2022

Photon Interactive Private Limited
Floor 2, Block 5, DLF IT SEZ, 1/124
Mount Poonamallee Road, Manappakkam
Chennai 600 089, Represented by its
Authorized Signatory Mr.Sanjiv C Lochan …. Petitioner

-Vs-

The Assistant Commissioner of Income Tax
Circle 1, LTU, Wanaparthy Block, 121
Mahatma Gandhi Road, Nungambakkam
Chennai 600 034. …. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the petitioner on the file of the Respondent and quash the impugned order under section 148A(d) of the Income Tax Act 1961 dated 25.03.2022 in DIN and Notice No. ITBA/ AST/F/ 148A/ 2021-22/ 1041530026(1) and the consequential notice u/s. 148 dated 25.03.2022 in ITBA/ AST/S/ 148_1/ 2021- 22/ 1041530760 (1) for the Assessment year 2018 -19.

For Petitioner	:	Mr.V.Vikram for M/s.Subbaraya Aiyar Padmanabhan
For Respondents	:	Mr.D.Prabhu Mukunth Arunkumar Junior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records of the petitioner on the file of the respondent and quash the impugned order under section 148A(d) of the Income Tax Act 1961 dated 25.03.2022 in DIN and Notice No. ITBA/ AST/F/ 148A/ 2021-22/ 1041530026(1) and the consequential notice u/s. 148 dated 25.03.2022 in ITBA/ AST/S/ 148_1/ 2021- 22/ 1041530760 (1) for the Assessment year 2018 -19.

2. The petitioner is an assessee under the respondent within

the meaning of the provisions of the Income Tax Act, 1961 (In short 'the Act'). In order to reopen the assessment for the assessment year 2018-19 under Section 147 of the Act, notice was issued under Section 148, before which the Revenue has to exhaust the procedure contemplated under Section 148A of the Act. Under that process, a notice under Section 148A(b) was issued on 17.03.2022 giving only six days time upto 23.03.2022 to the assessee to respond.

3. On receipt of the said notice, the petitioner assessee, on 23.03.2022 has sent a request seeking two weeks time to respond and the said request was received and acknowledged by the Revenue. Despite the same, the Revenue proceeded to pass orders on 25.03.2022, as if that the petitioner has not given any reply to the notice under clause(b) of Section 148A of the Act and accordingly proceeded to decide that, the notice under Section 148 of the Act can be issued against the petitioner assessee by the said order dated 25.03.2022. Challenging the same, the present writ petition has been filed.

4. Mr.Vikram, learned counsel for the petitioner pointed out that, even the seven days minimum period, which should be given to the assessee to respond for which notice under Clause(b) of Section 148A, has not been given. Assuming that the notice dated 17.03.2022 was given, it gave time only upto 23.03.2022, where there is no clear seven days time. Though a request was made for two weeks time by a request letter dated 23.03.2022, which was received and acknowledged by the Revenue, that was also not considered. However, in the impugned order it is stated that there is no reply from the petitioner. Therefore, it violates the principles of natural justice.

5. Per contra, Mr.D.Prabhu Mukunth Arunkumar, learned Standing Counsel appearing for the Revenue would submit that, from 17.03.2022 to 23.03.2022 if we calculate there is clear seven days and the minimum time as contemplated under the Act has been given to the assessee to respond, before which since there is no response, the Revenue proceeded to pass orders on 25.03.2022.

6. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

7. It is mandated under Clause(b) of Section 148A that minimum seven days and maximum 30 days time should be given when notice is given under that Section. Here in the present case, only six days time was given and the notice itself was given on 17.03.2022, where time was given upto 23.03.2022. Therefore, there is no minimum seven days time given in this case.

8. Moreover, when a request was given on 25.03.2022, having receipt of such request, it should have been considered by the Revenue before passing the order on 25.03.2022. However, no such consideration seems to have been made in this case.

9. Hence, this Court has no hesitation to hold that, there is violation of principles of natural justice in this case in passing the impugned order. In that view of the matter, this writ petition is disposed of with the following order.

- That the impugned order dated 25.03.2022 is set aside and the matter is remitted back to the respondent Revenue for reconsideration.
- While reconsidering the same, the notice dated 17.03.2022 shall be treated as a fresh show cause notice, as no fresh notice further will be issued by the Revenue and, treating this as a fresh show cause notice, it is open to the assessee to file their reply with supporting documents within a period of two weeks from the date of receipt of a copy of this order.
- On receipt of such reply, it is open to the Revenue to pass orders under Section 148A(d) of the Act.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KST
To

The Assistant Commissioner of Income Tax
Circle 1, LTU, Wanaparthy Block, 121
Mahatma Gandhi Road, Nungambakkam
Chennai 600 034.

+1cc to M/s. Hema Muralikrishnan, Advocate, S.R.No.29232
+1cc to M/s.Subbaraya Aiyar, Advocate, S.R.No.29617

W.P.No. 10193 of 2022

PMK(CO)
CT/20/06/2022