IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.9958 & 9994 of 2022

Harigovind ... Petitioner in WP.No.9958/2022

G.Ravindran ... Petitioner in WP.No.9994/2022

Vs

The Assistant Commissioner of Income Tax,
Non Corp Circle 3(1), Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
... Respondent in both WPs

Prayer in WP.No.9958/2022 : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondent and quash the impugned order under Section 148A(d) of the Income Tax Act, 1961, dated 30.03.2022 in DIN & Notice No.ITBA/AST/F/148A/2021-22/1042169851(1) and the consequential notice u/s.148 of the Act dated 31.03.2022 in DIN & Notice No.:ITBA/AST/S/148_1/2021-22/1042278799(1) for the Assessment year 2018-19.

Prayer in WP.No.9994/2022 : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondent and quash the impugned order under Section 148A(d) of the Income Tax Act, 1961, dated 31.03.2022 in DIN & Notice No.ITBA/AST/F/148A/2021-22/1042317528(1) and the consequential notice u/s.148 of the Act dated 31.03.2022 in DIN & Notice No.:ITBA/AST/S/148_1/2021-22/1042370642(1) for the Assessment year 2018-19.

In both WPs
For Petitioners : Mr.R.Vijayaraghavan
for Mr.Subbaraya Aiyar Padmanabhan

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

COMMON ORDER

Both the petitioners are assessees under the respondent and in order to reopen the assessment for the assessment year 2018-19 under Section 147 of the Act, notice has to be issued under Section 148 of the Act i.e., Income Tax Act, 1961. However, as per the amendment made which came into effect from 01.04.2021, Section 148A was inserted, through which, the procedure contemplated under the said Section has to be followed before issuing notice under Section 148 of the Act.

2. In short, whether notice under Section 148 can be issued against an assessee or not can be decided by exhausting the procedure contemplated under Section 148A of the Act.

3. Accordingly, notices under Section 148A of the Act were issued and the said notices dated 15.03.2022 and 14.03.2022 were, in fact, responded by the petitioners assessees on 21st March 2022, where, among other things, they sought for the information with the Department together with the copy of the satisfaction obtained from the Principal Commissioner of Income Tax, once that is furnished the assessees would furnish a detailed reply with reference to the information furnished.

4. In response to the said request made by the assessees, only on 29th March 2022 those information had been furnished by the Revenue to the assessees.

5. On receipt of such informations, the petitioners assessees sent a communication on 29th March 2022 itself to the Revenue stating that, since those informations have been furnished only today i.e., 29th March 2022, they need a week's time to study the same and reply to the respondent by way of objections, hence, they sought for one week adjournment.

6. Despite the said communications have been made by the petitioners assessees seeking for one week adjournment to respond, on 30.03.2022 and 31.03.2022, orders under Section 148A was passed rejecting the plea of the petitioners by deciding that, Section 148 notice can be issued against the assessees to proceed further, that orders are under challenge in these writ petitions.

7. Heard Mr.R.Vijayakumar, learned counsel appearing for the petitioners, who would submit that, under Section 148A(b), if a hearing has to be given by giving a notice, atleast 7 days shall be given to the assessee to reply and in these cases, such a one week time was sought for by the petitioners, that was impliedly denied by passing the impugned orders dated 30.03.2022 and 31.03.2022, therefore, on that ground itself, the impugned orders are vitiated, he contended.

8. However, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the Revenue would submit that, the one week time sought for by the petitioners by their request dated 29.03.2022 cannot be treated as the notice time of one week as contemplated under Section 148A(b) of the Act as that one week time already been given, for which, the petitioners also responded by giving reply.

9. When that being so, once again they cannot take a ground that, further one week is to be given within the meaning of sub-section (b) of Section 148A of the Act, therefore, on that ground, the impugned orders cannot be assailed, she submitted.

10. I have considered the said rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

11. The language used by the Legislature in Section 148A, especially sub-section (b) reads thus:

> "Provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice being not less than seven days and but not exceeding thirty days from the date on which such notice is issued." (Emphasis supplied)

Therefore, the minimum time that should be given by the Revenue to the assessee to respond is seven days but the maximum period is thirty days.

13. Here in the case in hand, no doubt, already the petitioners had given some reply, however, they sought for further time to give further reply, because, the reasons have been given by the Revenue as to how they come to a conclusion that, there has been an escaped assessment which necessitated or prompted the Revenue under Section 147 to reopen the assessment.

14. That additional information were furnished to the assessee only on 29th March 2022, therefore, it requires atleast a minimum time of one week to respond. This one week is part and parcel of whatever the proceedings issued under sub-section (b) of Section 148A of the Act.

15. Merely because already a notice was issued, the subsequent notice or information furnished by the Revenue need not be given a time of minimum one week to the assessee to respond, may be an extreme proposition, but that is not intended by the Legislature as the language used here is that, "not less than 7 days", that means that 7 days is a must, but the maximum of 30 days. Therefore, this Court has no

hesitation to hold that, the impugned orders dated 30.03.2022 and 31.03.2022 since have been passed without giving such one week minimum time as sought for by their communication dated 29.03.2022 are infirm and therefore, they are liable to be interfered with.

16. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

> That the impugned orders are set aside and the matters are remitted back to the respondent for reconsideration. In this process, now it is open to the petitioners to respond to the additional information supplied by the Revenue dated 29.03.2022 within one week period from the date of receipt of a copy of this order. On receipt of such reply within the one week time, it is open to the Revenue to examine the same and decide as to whether notice under Section 148 shall be issued against the petitioners assessees or not. Therefore, it is needless to mention that, the earlier Section 148 notice issued simultaneously along with the present impugned orders become otiose.

17. With these observations and directions, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Assistant Commissioner of Income Tax,
Non Corp Circle 3(1), Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+2ccs to M/s.Subbaraya Aiyar Padmanabhan, Advocate SR. No. 27741, 27743
+1cc to M/s. Hema Muralikrishnan, Advocate SR. No. 27861

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PL (CO)
PR (14/07/2022)