IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11056 of 2022
And
W.M.P.Nos.10648 and 10651 of 2022

Holy Cross Mat Hr Sec School,
C/o.Harvey Educational trust,
Represented by its Trustee and Authorised Signatory
Mrs.Anuradha Ravi ...Petitioner

Vs.

Commissioner of Income Tax,
Non-Corporate Circle 8 (1), Chennai,
Room No.507, Annexe Building,
5th Floor, Aayakar Bhavan,
Annexe Building,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ...Respondent

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the notice issued by the respondent u/s.148 of the Act dated 31.03.2022 bearing DIN and Notice No.ITBA / AST / S/ 148 / 2021 - 22 / 1042358396(1) and the order under Section 148A of the Act, passed by the respondent vide order dated 31.03.2022 bearing DIN and Letter No.ITBA / AST /F / 148A / 2021 - 22 / 1042356852 (1) and the subsequent order dated 31.03.2022 bearing DIN and Notice No.ITBA / AST/ F/ 17 / 2021 - 22/ 1042379232 (1) and quash the same.

For Petitioner : Mr.Aravind Pandian
Senior Counsel
for M/s.Salai Varun

For Respondent : Mrs.Hema Muralikrishnan

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the notice issued by the respondent u/s.148 of the Act dated 31.03.2022 bearing DIN and Notice No.ITBA / AST / S/ 148 / 2021 - 22 / 1042358396(1) and the order under Section 148A of the Act, passed by the respondent vide order dated 31.03.2022 bearing DIN and Letter No.ITBA / AST /F / 148A / 2021 - 22 / 1042356852 (1) and the subsequent order dated 31.03.2022 bearing DIN and Notice No.ITBA / AST/ F/ 17 / 2021 - 22/ 1042379232 (1) and to quash the same.

2.The case of the petitioner is that the petitioner on receipt of notice under Section 148 A of the Income Tax Act, 1961, submitted reply on 30.03.2022, however, the respondent without considering the same, passed the impugned order dated 31.03.2022. Hence, this writ petition.

3.The learned Senior Counsel appearing for the petitioner submitted that for the assessment year 2015 - 16, the respondent issued notice under Section 148 A of the Income Tax Act calling for the petitioner to file reply on or before 29.03.2022 and the petitioner submitted reply on 29.03.2022, however, the respondent received the same on 30.03.2022 with delay of one day. Hence, the petitioner's reply was not considered and the impugned order dated 31.03.2022 was passed, which is not sustainable one.

4.The learned Senior Counsel appearing for the petitioner further submitted that this Court may set aside the impugned order dated 31.03.2022 and remand the matter back to the respondent for consideration of the reply submitted by the petitioner in terms of Section 148 A of the Income Tax Act.

5.The learned Standing Counsel appearing for the respondent submitted that a show cause notice was issued to the petitioner calling upon the petitioner to submit reply on or before 29.03.2022 and the petitioner submitted the reply on 30.03.2022. Since the petitioner did not submit the reply within the prescribed time limit, the impugned order dated 31.03.2022 was issued to the petitioner, which is perfectly valid one and does not warrant any interference.

6.The facts in the case is not in dispute. Admittedly, for the assessment year 2015 - 16, a show cause notice was issued to the petitioner calling upon the petitioner to submit reply on or before 29.03.2022 and the petitioner also submitted the reply on 29.03.2022, however, the office of the respondent received the same only on 30.03.2022 with a delay of one day, thereby, the impugned order dated 31.03.2022 came to be passed.

7.Admittedly, the reply submitted by the petitioner was not considered by the respondent before passing the impugned order. This Court is of the opinion that one day delay in submitting the reply by the petitioner will not cause any prejudice to the respondent. Hence, inorder to give fair opportunity to the petitioner, this Court is inclined to set aside the impugned order. Accordingly, the impugned order passed by the respondent dated 31.03.2022 is hereby set aside and the matter is remanded back to the respondent for fresh consideration.

8.The respondent is directed to consider the reply submitted by the petitioner which was received by the respondent on 30.03.2022 and thereafter proceed in accordance with law.

9.The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner of Income Tax,
Non-Corporate Circle 8 (1), Chennai,
Room No.507, Annexe Building,
5th Floor, Aayakar Bhavan,
Annexe Building,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+1cc to Mr.Salai Varun, Advocate, S.R.No.29599

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.29936

W.P.No.11056 of 2022
And
W.M.P.Nos.10648 and 10651 of 2022

VBM(CO)
RGA(06/05/2022)