

19.09.2023

Sl no. 7

Ct no. 2

P.M.

WPA 21801 OF 2023

Badrinath Vanijya Private Ltd.

- Vs -

Union of India & Ors.

Mr. Pranit Bag,
Mr. Anuj Kr. Mishra,
Mr. Debdutta Saha,
Mr. Balaram Patra

... for the petitioner

Mr. Om Narayan Rai

... for the respondent

By this writ petition petitioner has challenged the impugned order under section 148A(d) of the Act dated 21st April, 2022 relating to assessment year 2018-2019 on the ground of violation of principle of natural justice by not considering its reply/objection dated 21st April, 2022 which was to be filed on 20th April, 2022.

It is the case of the petitioner that the Assessing officer in its impugned order under Section 148A(d) of the Act has recorded that no response was received from the assessee petitioner while response was filed by delay of one day which is the day of passing the impugned order.

Petitioner is further aggrieved by the aforesaid impugned order by which it has been recorded that during the enquiry proceeding the submission was furnished by the petitioner and was admitted by the petitioner that fund in question was unsecured loan.

Since response to the notice under Section 148A(b) of the Act was not filed by the petitioner on the date fixed, the Assessing officer could not be faulted for recording that no reply/response was filed but at the same time at least on the date when the impugned order was passed, the reply/response was filed. In the interest of justice the Assessing officer concerned is directed that before proceeding any further subsequent to the notice under Section 148A(d) and notice under Section 148 of the Act he shall consider the aforesaid objection/response in accordance with law and on considering the same if it is found that the petitioner has been able to make out a case for dropping the impugned proceeding he shall drop and if it is found that the reply/response in question is not sustainable in law, the Assessing officer shall be free to proceed subsequent to the impugned order under Section 148A(d) of the Act.

Objection of Mr. Bag, learned advocate appearing for the petitioner that in the instant case two notices under Section 148A(b) of the Act were issued is not sustainable since all the proceeding has been made on the basis of second notice to which petitioner has responded and in which the petitioner

has not at all challenged the issuance of two notices under Section 148A(b) of the Act.

In view of the discussion made above this writ petition being WPA 21801 of 2023 stands disposed of.

(Md. Nizamuddin, J.)