IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7424 OF 2023

AKSHAY GAS AGENCY THROUGH ITS PROPRIETOR
VERSUS
PRINCIPAL COMMISSIONER INCOME TAX AND ANR

…

Mr. Raviraj R. Chandak, Advocate for the Petitioner.
Mr. Alok Sharma, Advocate for Respondent Nos.1 and 2.

…

CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

DATE : 10th JULY, 2023.

PER COURT:-

1. We have considered the submissions of the learned Advocate for the respective sides.

2. The department has opposed this petition contending that the proceedings under Section 148 of the Income Tax Act, may be permitted to be proceeded with.

3. The issue raised in this petition is with regards the submission of a reply to the show cause notice under Section 148-A (b) of the Income Tax Act, belatedly and such reply having been tendered before the impugned order under Section 148-A (d) is passed. By judgment dated 28.06.2023, this Court has dealt with the said issue in Writ Petition No.10244/2022 filed by ***Pradeep S/o Tukaram Kokadwar Vs. The Principal Chief Commissioner Income Tax-1, Nashik and Another***. The only difference is that in the earlier petition, the notice was issued

prior to the amendment of 2021. Nevertheless, the law as is laid down in ***Pradeep S/o Tukaram Kokadwar*** (supra), will also apply to this case.

4. Considering the dates and sequence of events set out in the petition, it is obvious that the notice under Section 148-A (b) was dated 16.02.2023. 11 days time was granted to the petitioner to submit a reply. The petitioner tendered a reply on 23.03.2023, belatedly. However, the impugned order was passed on 28.03.2023, when the reply of the petitioner was already before the concerned authority.

5. In view of the above and the view taken by this Court in ***Pradeep S/o Tukaram Kokadwar*** (supra), **this petition is partly allowed**. The impugned order dated 28.03.2023 is quashed and set aside. We permit respondent no.2 to consider the reply of the petitioner dated 23.03.2023 and pass an appropriate reasoned order in accordance with law, within 30 days from today.

6. Needless to state, thereafter the parties would take recourse to the remedy as is permissible in law.

(Y. G. KHOBRAGADE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

Devendra/July-2023