**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**WRIT PETITION NO. 8372 OF 2023**

Raju s/o Bhikulal Yadav
Age: 52 years, Occ.: Business & Agri.,
R/o. Tanmay Plaza, Pundlikwadi,
Nanded Tq. & Dist. Nanded
(Maharashtra State)
PAN No. ABPPY6081M ... **PETITIONER**

V/s.

1. The Principal Chief Commissioner
Income Tax, Pune.

2. The Income Tax Officer,
Ward-1, Nanded
Tq. & Dist. Nanded. ... **RESPONDENTS**

...

Mr. Raviraj R. Chandak, Advocate for the Petitioner
Mr. Alok Sharma, Advocate for R/1 & 2

...

**CORAM : RAVINDRA V. GHUGE &**
**Y.G. KHOBRAGADE, JJ.**
**DATE : 18th July, 2023**

**ORAL JUDGMENT (Per: Ravindra V. Ghuge, J.) :-**

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The short issue involved in this case is as to whether the Income Tax Department can refuse to look into a reply which is tendered belatedly, to a notice under Section 148-A (b) of the Income Tax Act.

3. The petitioner has put forth prayer clauses (C), (D) and(E) as under:

(C) By issuing appropriate writ or direction like in nature the impugned notice dated 24/03/2023 U/Section 148-A(b) of Income Tax Act and order dated 11/04/2023 passed under U/Section 148-A(d) of Income Tax Act and consequential notice dated 11/04/2023 issued U/Section 148 of Income Tax Act, by the respondent no.2 for the assessment year 2016-17 may kindly quash and set aside.

(D) To hold and declare that, show cause notice dated 24/03/2023 U/Section 148-A(b) of Income Tax Act and impugned notice dated 11/04/2023 passed under U/Section 148 of Income Tax Act is time barred in view of statutory impediment as contemplated U/section 149(1)(b) of the Income Tax Act and therefore, initiation of reopening proceeding for the assessment year 2016-17 is without jurisdiction.

(E) Pending the hearing and final disposal of the writ petition, the effect, execution, implementation and further proceeding in pursuance to the impugned order dated 11/04/2023 passed under U/Section 148-A(d) of Income Tax Act and consequential notice dated 11/04/2023 issued U/Section 148 of Income Tax Act, for the assessment year 2016-17 by the respondent no.2 may kindly be stayed.

4. Section 148-A (b) requires an opportunity of hearing to be given to the assessee, which would not be less than seven days and should not be exceeding thirty days from the date of the notice or such time as may be extended by the concerned authority on an application tendered by the assessee.

5. In **Civil Appeal No.3005/2022 (Union of India and Others V/s. Ashish Agarwal)**, the Hon'ble Supreme Court delivered a Judgment on 04.05.2022

and has specifically concluded in paragraph 10 (i) (the last sentence) which reads as "*the Assessing Officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter*".

6. There is no dispute that the petitioner received the notice under section 148-A(b) of the Income Tax Act dated 24.03.2023. On the last date of the notice period i.e. 05.04.2023, the petitioner sought an adjournment by tendering an online application. On 06.04.2023 i.e. one day thereafter, the petitioner uploaded a detailed reply to the said show cause notice. Respondent No.2 Authority delivered the impugned order on 11.04.2023.

7. The learned Advocate Shri Sharma, appearing for the Income Tax Department, has vehemently opposed this petition and submits that all grounds can be kept open to be agitated by the petitioner under section 148 of the Income Tax Act. When a statutory remedy is available to the petitioner, this Court may not entertain the grievance. So also, the issue is as regards the amount which were not included in the income assessable to tax.

8. Considering the law as applicable and the view taken by us in **Pradeep Tukaram Kokadwar (Writ Petition No. 102 of 2022 decided on 28.06.2023), i**t

is obvious that the Petitioner/Assessee can reply within thirty days. Section 148-A(b) indicates that the minimum time to be granted is seven days and the maximum is thirty days. If a justifiable reason is put forth, the time can be extended even there beyond. We also find from the record that the petitioner had applied for an extension of time which is in tune with the provisions of the Income Tax Act. Having moved an application for extension of time and having submitted the reply within one day, the Department could have considered his reply.

9. The issue is that the Department did not look into the reply / response of the Petitioner which was uploaded on 06.04.2023, when the decision was pronounced by the Department under 148-A (d), on 11.04.2023. It would have been pragmatic for the Department to have considered the response which was already available in it's records at the time when the decision was pronounced on 11.04.2023. We do not find any such conclusion from the judgment in **Ashish Agarwal** (supra), that a reply filed within the period of thirty days, but after the expiry of fourteen days mentioned in the notice, should not be looked into by the Department. It is in the interest of justice and fair play that when a reply is available on record, though filed belatedly, but, much prior to the decision arrived at by the authorities, the

same should be considered. It would be far fetched to hold that the Department should ignore such a reply only for the reason that it was filed belatedly, but before the final order was passed.

10. The learned Advocate for the Petitioner cites a judgment dated 12.05.2022 delivered by the Delhi High Court in **Divya Capital One Private Limited V/s. Assistant Commissioner of Income Tax Circle 7 (1) Delhi & Anr.**, wherein a similar view is taken. A detailed reply was filed after the period set out in the notice under Section 148-A (b) had expired, but, was received by the Department before the final order could be passed.

11. In view of the above, **this petition is partly allowed**.

12. The order dated 11.04.2023. stands quashed and set aside and the proceedings are relegated to the office of Respondent No.2. We expect the said authority to consider the reply of the Petitioner dated 06.04.2023 in the light of the notice dated 24.03.2023 and pass an appropriate reasoned order in accordance with law.

13. Rule is made partly absolute in the above terms.

**[Y.G. KHOBRAGADE, J.]** **[RAVINDRA V. GHUGE, J.]**

JPChavan