IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO.8784 OF 2023

PS COTTON AND OIL INDUSTRIES THROUGH IT'S AUTHORISED PARTNER PRAVIN RAMKISAN CHANDAK
VERSUS
THE PRINCIPAL COMMISSIONER INCOME TAX NASHIK AND OTHERS

Mr.R.R.Chandak, Advocate for the Petitioner.
Mr.Alok Sharma, Advocate for Respondent Nos. 1 to 3.

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

DATE : AUGUST 4, 2023

PER COURT :

1. This is a case wherein the Petitioner claims that before he could receive the notice u/s 148A(b), an order u/s 148A(d) of the Income Tax Act was passed.

2. The learned Advocate representing the Department, vehemently opposes the said contention and prays that the petition deserves to be dismissed since the Petitioner has the liberty to canvass all his points while responding to the show cause notice u/s 148 of the Income Tax Act.

3. We have noted the relevant sequence of events. The show cause notice u/s 148A(b) was issued on 30.03.2023. The Petitioner claims to have received the said notice on 14.04.2023 (a National holiday), through post. On the very same day, the Petitioner prepared a reply and claims to have delivered it to the concerned Ward Officer, Aurangabad on 14.04.2023. There is no dispute that 14th April is a National Holiday.

4. The learned Advocate for the Department submits that it is most unlikely and improbable that the Postman, who is in the service of the Central Government, could have delivered the envelope of the Department to the Petitioner on 14.04.2023. Moreover, the Department has not yet received the acknowledgment. The Petitioner has produced the acknowledgment.

5. In the light of the above disputed facts, we are circumspect as to when did the Petitioner receive the notice. There is, however, no dispute that the impugned order was passed on 13.04.2023, and the reply of the Petitioner was not before the Authority. A copy of the said reply dated 14.04.2023 is placed before us by the Petitioner to suggest

that the reply was prepared. However, there is no evidence that the reply was served upon the IT Department. The Petitioner has no acknowledgment either of a hand delivery or a delivery through the post.

6. Though we are not convinced by the explanation tendered by the Petitioner, we are giving the benefit of doubt to him, since his reply is not before the Court. This order shall not be treated as a precedent and shall not be cited in any other case by anyone.

7. In view of the above, **this petition is partly allowed** only in the light of the peculiar facts recorded above. The Petitioner shall serve the reply on the Respondent Authority, on or before 11.08.2023. Thereafter, the Department is at liberty to pass an order u/s 148A(d) of the Income Tax Act.

8. Needless to state, after such order is passed, the Petitioner would take recourse to the statutory remedy, as is permissible in Law.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**