

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

WRIT PETITION NO. 10244 OF 2022

Pradeep S/o Tukaram Kokadwar
Age: 57 years, Occ.: Business,
R/o. Mayur Agencies, Mondha Road,
Jniktur, Tq. Jintur, Dist. Parbhani.
(Maharashtra State)
PAN No. BGSPK0640R

... **PETITIONER**

V/s.

1. The Principal Chief Commissioner
Income Tax-1, Nashik
Income Tax Building, Agra Road,
Nashik, Dist. Nashik.

2. The Income Tax Officer,
Ward Hingoli
Tq. & Dist. Hingoli.

... **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 : 28th June, 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 who is an assessee, is alleged to have failed in disclosing total credits of Rs.3,48,29,506/- during the financial year 2015-2016, relevant to the assessment year 2016-2017 which were deposited in the bank account held by the Petitioner with M/s. Shri Renuka mata Multi State Urban Co-operative Credit Society Limited. With the said notice having been issued on 29.05.2022, a period of fourteen days was granted to the Petitioner to tender a reply. Our attention is drawn to the judgment delivered by the Hon'ble Supreme Court dated 04.05.2022 in **Civil Appeal No.3005/2022 (Union of India and Others V/s. Ashish Agarwal)**, more specifically to paragraph 10 (i) (the last sentence) which reads as "*the Assessing Officer shall, within thirty days from today provide to the respective assessee information and material relied upon by the Revenue, so that the assessee can reply to the show-cause notices within two weeks thereafter*".

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 exceed 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. The Petitioner has tendered his reply dated 14.06.2022, to the notice at issue, which was uploaded on 15.06.2022. The authorities have passed an order under Section 148-A (d) on 27.07.2022. It is obvious that when the concerned authority delivered its order on the said date, the reply was already before the said authority.

6. The learned advocate Shri Sharma appearing for the Income Tax Department, who has vehemently opposed this petition, submits that the authority concerned has recorded in paragraph 3 of its order which reads as under:

“03. Information and material shared with the assessee:-

Following the directions of the Hon'ble Supreme Court of India as mentioned above and considering the CBDT Instruction No.01/2022 dated 11/05/2022 and ITBA step- by step document No.1 dated 12-05-2022 related to implantation of the decision of Hon'ble Supreme Court of India, the information and the material was supplied to the assessee on 29.05.2022 and time of two weeks from date of communication of letter issued to the assessee conveying information/material relied upon was provided to the assessee for submitting the response/reply.”

7. He, therefore, contends on instructions, that when the Hon'ble Supreme Court granted only fourteen days time to submit a reply, any response from the assessee after such fourteen days, is to be ignored. The Department

further contends that on verification, it was observed that the Petitioner had filed his return of income for the year under consideration and the aforesaid cash deposits / credits were not accounted for the year under consideration. We find that the said stand taken by the Department as is set out in the reproduced paragraph 3, would amount to a pedantic view. The Hon'ble Supreme Court in **Ashish Agarwal** (supra), has recorded that the time available for an assessee to reply is 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 could be extended even there beyond.

8. However, Shri Sharma is right in contending that the fourteen days allotted to the Petitioner expired on 13.06.2022. There is no dispute on this contention. He is right in contending that the assessee should have moved an application online seeking extension of time and the Department could have considered that application.

9. It is obvious that the Assessee / Petitioner did not move an application till 13.06.2022, for seeking extension of time. Though his reply is dated 14.06.2022, it is admittedly uploaded on 15.06.2022. Had he made an application for seeking extension of time, further complications would not have occurred. On this count, since we are favorably entertaining this petition, we would impose nominal cost of Rs.5,000/- on the Petitioner. The learned

advocate Shri Sharma submits that the said amount may be donated to the Advocate's Association of the Bombay High Court, Bench at Aurangabad. As such, the Petitioner would deposit such amount with the Advocate's Association of the Bombay High Court, Bench at Aurangabad within fifteen days from today.

10. The issue is that the Department did not look into the reply / response of the Petitioner which was uploaded on 15.06.2022, belatedly by two days, when the decision was pronounced by the Department under 148-A (d), on 27.07.2022. It would have been pragmatic for the Department to have considered the response which was already available in its records at the time when the decision was pronounced on 27.07.2022. We do not find any such conclusion from the judgment in **Ashish Agarwal** (supra), that a reply filed within the period of thirty days and 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.

11. 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.

12. In view of the above, this **petition is partly allowed**. The order dated 27.07.2022 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 14.06.2022 in the light of the notice dated 29.05.2022 and pass an appropriate reasoned order in accordance with law.

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

[Y.G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]