Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.107 OF 2023 (F)

SHRI VISHNU R. PRABHU
son of Shri Ramnath Prabhu,
59 years old, resident of House No.17, 'Shree Ramnath Smruthi', Torda, Alto-Porvorim, Bardez Taluka, Goa. ...**Petitioner**

Versus

1 UNION OF INDIA
through the Finance Secretary,
Ministry of Finance, New Delhi

2 THE DEPARTMENT OF INCOME-TAX,
Aaykar Bhawan, Plot No.5, EDC Complex, Patto Plaza, Panaji, Goa. ... **Respondents**

Mr Rui Alberto Gomes Pereira, Advocate for the Petitioner.

Ms Amira Razaq, Standing Counsel for Respondent No.2.

CORAM : **M.S. SONAK & BHARAT P. DESHPANDE,JJ.**

DATE : **14th JUNE, 2023**

ORAL JUDGMENT (Per M.S. Sonak,J)

1. Heard Mr Rui Gomes Pereira, learned Counsel for the petitioner and Ms Amira Razaq, learned Standing Counsel for Respondent No.2.

2. Rule. The rule is made returnable immediately at the request and with the consent of the learned Counsel appearing for the parties. Even otherwise, by order dated 20/02/2023, the Court had clarified that an endeavour would be made to dispose of this petition finally at the admission stage.

3. The petitioner was served a notice dated 20/05/2022 under Section 148 A(b) of the Income Tax Act requiring the petitioner to show cause within two weeks why notice under Section 148 of the Income Tax Act should not be issued in the petitioner's case.

4. The record indicates that this notice was served upon the petitioner through e-mail at his registered e-mail address. The petitioner filed a response to the above notice on 31/05/2022. However, this response was filed in the physical format. This response is placed on record as Exh. B(Page 22 of the paper book). The response bears the acknowledgement of the department. Though, now a controversy is raised about the service upon the Assessing Officer.

5. By order dated 29/07/2022, the Assessing Officer disposed of the notice dated 20/05/2022 by observing that the petitioner failed to file any objections to the notice dated 20/05/2022 even though the opportunity and time of two weeks were granted to the petitioner to file objections. This is evident from paragraphs 3 and 4 of the order dated 29/07/2022.

6. Thus, the order dated 29/07/2022 was made without considering the objections filed by the petitioner on 31/05/2022. Instead of going into the issue of whether the objections should have been filed in the physical form or through e-mail, we think that in the peculiar facts of the present case, the interest of justice would be met if the impugned order dated 29/07/2022 and the notices issued in pursuance of the impugned order are set aside, and the respondents consider petitioner's objections/response dated 31/05/2022 and make a fresh order in accord with the law and on its own merit.

7. The rival contentions about the necessity of indicating in the notice itself that a response had to be through e-mail rather than in the physical format or the scope and merit of the CBDT circular are not being gone into this petition considering these peculiar facts.

8. Ms Razaq is, however, justified in seeking clarification that the timeline specified for disposing of such notices should be extended proportionately from the date of the impugned order to date so that the revenue is not unduly prejudiced. Accordingly, the period from the date of the impugned order dated 29/07/2022 till today will stand excluded or in any case; the timeline will stand proportionately extended.

9. Further, we clarify that we have not examined the merits of the matter because the same has to be examined by the Assessing Officer. Needless to add, all contentions of all parties, including the defences available to the Assessee under Section 149 of the Income Tax Act and all rights and contentions that may be available to the Assessee and the Revenue in law, are kept open.

10. The rule is accordingly made absolute in terms of prayer clause 'b' of this petition which reads as follows with liberty to the Assessing Officer to make fresh order after considering petitioner's objections/response dated 31/05/2022.

> *"to issue a Writ in the nature of Certiorari or any other appropriate Writ, order or direction quashing and setting aside the impugned order dated 29/07/2022 and 27/01/2023 (No.ITBA/COM/F/17/2022-23/1044306502(1)) (Exhibit C colly and Exhibit D)"*

11. There shall be no order as to costs.

12. All concerned to act on the authenticated copy of this order.

BHARAT P. DESHPANDE, J. **M.S. SONAK, J.**

MEENA VISHAL BHOIR Digitally signed by MEENA VISHAL BHOIR Date: 2023.06.16 14:01:14 +05'30'