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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS.489 & 490 OF 2022

WRIT PETITION NO.489 OF 2022

VEENA PRAFULLA
VELINGKAR ... PETITIONER

Versus

ASST. COMMISSIONER OF
INCOME TAX, CIRCLE 1(1)
PANAJI AND ANR. ... RESPONDENTS

AND
WRIT PETITION NO.490 OF 2022

PRAFULLA VELINGKAR ... PETITIONER

Versus

ASST. COMMISSIONER OF
INCOME TAX, CIRCLE 1(1)
PANAJI AND ANR. ... RESPONDENTS

Mr. Gaurang D. Panandiker, Advocate for the Petitioners.
Ms. Susan Linhares, Standing Counsel *for the Respondents.*

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

DATE : 27th FEBRUARY 2023

ORAL ORDER :

1. Heard Mr. Gaurang Panandiker for the petitioners in both the petitions. Ms. Susan Linhares appears for the respondents.

2. In both these petitions, the challenge is to the impugned notices issued under Section 148 of the Income Tax Act, 1961 seeking to reopen assessment for the year 2016-17, on the ground that such income escaped assessment.

3. The petitioners, admittedly, did not file a response to the notice objecting to its issuance, within the prescribed period. Such response had to be filed online. The petitioners state that they saw the notice belatedly on the online portal of the Income Tax Department. The defence in their mail at the late stage, at least prima facie, cannot be regarded as a valid defence. The response was filed at a later point of time in the physical mode and online.

4. Mr. Panandiker states that even a belated response was required to be considered given the decision of the Hon'ble Delhi High Court in the case of ***Divya Capital One Private Limited (earlier known as Divya Portfolio Private Limited) V/s. Assistant Commissioner of Income Tax Circle 7(a) Delhi & Anr.***[1]

5. Since, in this case, the explanation for delayed response was not satisfactory, we do not think that, as a rule, the respondents were duty bound to consider the delayed response.

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6. Mr. Panandiker submits that in terms of Section 149(1)(b), the assessment could not have been reopened since the same was involving an amount of less than ₹50.00 lakhs. Ms. Linhares pointed out that total amount involved in both the matters was around ₹58.00 lakhs. It is only on account of application under Section 5-A of the Income Tax Act that the individual notices might have referred to amounts lesser than ₹50.00 lakhs. She, therefore, submits that the provisions of Section 149 (1)(b) would not apply.

7. At this stage, we are not concerned with the assessment on merits. Merely because the notice seeking reassessment is not being interfered with, does not mean that the petitioners will be deprived of an opportunity to raise all such issues during the assessment proceedings. Accordingly, by granting liberty and otherwise clarifying that all the petitioners' contentions regards assessment are left open, we propose not to interfere with the impugned notices which are the subject matter of these petitions.

8. Accordingly, these petitions are disposed of with above liberty/clarification. The petitioners' defences including the defence based on the provisions of Section 149(1)(b) should be considered by the Assessment Authorities in accord with law.

9. Accordingly, both these petitions are disposed of with liberty as aforesaid.

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

NITI K HALDANKAR

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