Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.627 OF 2022

Browntape Technologies Private
Limited, H. No. 846/1(5), Flat
No. F2, Xenia Building
Kadamba Depot Road,
Alto Porvorim, Soccoro,
Bardez, Goa — 403521. ... Petitioner

Versus

1. Assistant Commissioner of
Income Tax, Circle 1(1), 1st
Floor, Aayakar Bhawan, Plot
No.5, EDC Complex, Patto
Plaza, Panaji, Goa -403001.

2. Principal Commissioner of
Income Tax Panaji, Aayakar
Bhawan, 1st Floor, Plot No 5,
EDC Complex, Patto Plaza,
Panaji, Goa -403001

3. Principal Chief
Commissioner of Income Tax,
Karnataka & Goa Region
Central Revenue Building,
Queens Road Bengaluru 560001

4. The Union of India,
Through the Secretary,
Government of India,
Ministry of Finance,
New Delhi - 110 011. … Respondents

Mr Jay Bhandari and Mr P. Karpe, Advocates *for the Petitioner.*
Ms Susan Linhares, Standing Counsel *for the Respondents.*

CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.

DATE : 5th APRIL 2023

ORAL JUDGMENT : (Per M.S. SONAK, J.)

1. Heard Mr Bhandari with Mr Karpe for the petitioner and Ms Susan Linhares, learned Standing Counsel for the respondents.

2. Rule. The rule is made returnable forthwith.

3. The petitioner challenges order dated 29.07.2022 made under Section 148A(d) of the Income Tax Act, 1961 (Said Act) *inter alia* on the ground that the same was made without considering the objections filed by the petitioner.

4. The record shows that the petitioner was served with a notice dated 25.05.2022 seeking to reopen the assessment for the Assessment Year 2016-17. This notice was issued in compliance to the Hon'ble Supreme Court's order dated 04.05.2022 and CBDT instruction no.01/2022 dated 11.05.2022.

5. The petitioner filed objections to the above notice. The petitioner has placed on record the acknowledgement receipt and the acknowledgement number which shows that such response was filed on 11.07.2022. In the response/objections the petitioner had also applied for condonation of delay in filing the response.

6. The issue about condonation no longer survives because the respondents issued to the petitioner yet another notice dated 14.07.2022 seeking to reopen assessment for the year 2016-17. To this fresh notice, the petitioner filed response/objections on 21.07.2022. This is evident from the acknowledgement receipt produced on record by the petitioner.

7. By the impugned order dated 29.07.2022, the respondents have concluded that there was a case made out for issuance of notice under Section 148 of the said Act relevant to Assessment Year 2016-17 as the income had indeed escaped assessment. This order records that inspite of the opportunity granted to the petitioner, the petitioner has failed to file any objections to the notices issued.

8. In the affidavit filed on behalf of the respondents, it is reiterated that the petitioner's objections were never received. However, there is no response to the two acknowledgement receipts placed on record by the petitioner. There is not even any allegation about such acknowledgment receipts being fabricated documents. These acknowledgement receipts have been generated by the system and in the absence of any doubt about the authenticity of such acknowledgment receipts, there is no case made out to doubt the petitioner's statement made on oath that objections were filed not once but twice to the notices issued by the respondents.

9. Accordingly, we are satisfied that the impugned order dated 29.07.2022 was made without considering the petitioner's objections and based on the improper premise that it was the petitioner who had failed to file the objections. On this short ground, the impugned order dated 29.07.2022 will have to be set aside.

10. Accordingly, we set aside the impugned order dated 29.07.2022 but grant liberty to the respondents to consider petitioner's objections and pass appropriate orders in accordance with law. All contentions of all parties are specifically left open.

11. Since the impugned order dated 29.07.2022 is set aside even the consequential notice dated 29.07.2022 under Section 148 of the said Act is set aside with liberty as aforesaid.

12. The rule is accordingly made absolute in the above terms. There shall however be no order for costs.

VALMIKI SA MENEZES, J. **M.S. SONAK, J.**

NITI K HALDANKAR
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