IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8049 OF 2023

Gilani Infra Private Limited ....Petitioner

V/s.

Assistant Commissioner of Income Tax, Circle – 2(2), Mumbai and Anr. ...Respondents

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Mr. Shreyas Shrivastava a/w Mr. Tanmay Bidkar for Petitioner.
Mr. Akhileshwar Sharma a/w Ms. Shilpa Goel for Respondents.

CORAM : K.R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATED : 4th JULY 2023

P.C. :

1. Petitioner is impugning a notice dated 30th March 2023 issued under Section 148A(b) of the Income Tax Act, 1961 (the Act) and the order dated 6th April 2023 passed under Section 148A(d) of the Act for Assessment Year 2019-20. Though various grounds have been raised in the petition, the primary reason petitioner is aggrieved is that in the order dated 6th April 2023 under Section 148A(d) of the Act, Respondent No.1 has incorrectly recorded that assessee has neither responded nor submitted any reply to the Show Cause Notice. Respondent No.1 has thereafter proceeded to hold that there has been an escapement of income in the sum of Rs.2,72,62,525/-.

2. Petitioner had received a notice dated 30th March 2023 under Section 148A(b) of the Act calling upon petitioner to submit a reply on or

before 6th April 2023. The notice had been digitally signed on 30th March 2023, the time is not clear. On 6th April 2023 petitioner replied to the notice giving all details. Petitioner also received an E-mail from the department at 04:14:50 p.m. IST on 6th April 2023 confirming receipt of a reply from petitioner. The impugned order came to be passed on 6th April 2023 at 6.17 p.m. incorrectly recording that petitioner has not responded or submitted any reply to the Show Cause Notice. This was followed by a notice under Section 148 of the Act also dated 6th April 2023 issued at 6.38 p.m. In our view having considered the petition as well as the documents annexed to the petition, Respondent No.1 has incorrectly recorded that petitioner has not responded to the notice.

3. In the circumstances, we quash and set aside the impugned order dated 6th April 2023 passed under Section 148A(d) of the Act and the notice under Section 148 of the Act. Respondent No.1 shall consider the reply filed by petitioner and may pass such order as he deems fit in accordance with law. All rights and contentions of petitioner is kept open including the issue of limitation.

4. Before passing any order, petitioner shall be given a personal hearing, notice whereof shall be communicated atleast seven working days in advance. If the Assessing Officer is going to rely on any judgment or any order of the Tribunal or Court, list thereof shall be provided to petitioner in

advance alongwith notice of personal hearing so that petitioner will be able to deal with the same/distinguish the same during the personal hearing. Any order passed shall be a reasoned and detailed order dealing with all submissions of petitioner.

5. Petition disposed.

(FIRDOSH P. POONIWALLA, J.) **(K.R. SHRIRAM, J.)**