IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2852 of 2022

ALONG WITH

WRIT PETITION NO. 2867 OF 2022

Bhavna Steel ...Petitioner

Versus

The Income Tax Officer

– 5(1)(1), Mumbai and Anr. ...Respondents

...

Mr. Rahul Sarda i/by Ms. Neelam Jadhav for the petitioner in both petitions.

Mr. Akhileshwar Sharma a/w. Ms. Shilpa Goel for the respondents in both petitions.

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CORAM	:	**DHIRAJ SINGH THAKUR AND KAMAL KHATA, JJ.**
DATE	:	**17TH MARCH 2023.**

ORDER

[PER: KAMAL KHATA, J.]

1. These two Writs are for two assessment year's ('AY') 2016-17 and 2015-16, with common facts, and therefore a common order. For brevity, we advert to the facts stated in Writ Petition No. 2852 of 2022 as was argued.

2. This Petition under Article 226 impugns notice under section 148 of the Income-tax Act, 1961 (Act) dated 31st March

SUMEDH NAMDEO SONAWANE
Digitally signed by SUMEDH NAMDEO SONAWANE Date: 2023.05.06 16:29:02 +0530

2021 purportedly issued by Respondent No.1 proposing to reassess the income for the AY 2015-16 on an abandoned Permanent Account Number (PAN) that was issued wrongly to the Petitioner as company instead of a Partnership Firm. It also impugns the order dated 30th March 2022 under section (u/s) 147 r.w.s. 144 and the demand notices dated 30th March 2022 u/s 156, 31st March 2022 u/s 274 read with (r/w) 271B and 31st March 2022 u/s 274 r/w 271F of the Act.

FACTS:

3. The Petitioner is a Partnership Firm engaged in the business of trading in stainless steel since 1983. It is stated that presently, Mr. Mahendra Surajmal Shah and Mr. Akshit Mahendra Shah are partners and their other family members were the erstwhile partners of the Firm. It is stated that the Petitioner has two PANs viz. AAEFB9418R on which the petitioner is assessed since 2005-06 (referred to as the *'correct PAN'*) and AAACB2043F issued earlier (referred to as the *'wrong PAN'*) and is abandoned. It is stated that the Petitioners are not able to make statements as to the circumstances in which the *wrong PAN* was in status of a Company and not a Partnership Firm, why it was stopped being used and a new one viz. the correct PAN was applied for and *wrong PAN* not surrendered and cancelled. It is further stated that the Petitioner has not registered the *wrong PAN* on the e-filing

portal and consequently has not registered the email or phone / mobile number under the *wrong PAN*. The Petitioner therefore has no access to the e-filing portal under the *wrong PAN*. The Petitioner has filed its return of income on 10th September 2016 under the PAN AAEFB9418R as per the audited financial statements.

4. It is the case of the Petitioner that, they received a Show Cause Notice on 26th March 2022 (dated 25th March 2022) under the *wrong PAN*, alleging that they had failed to furnish returns for AY 2016-17 within 30 days of the notice issued u/s 148 of the Act on 31st March 2021. The notice also indicates the details the Petitioner failed to furnish pursuant to a notice dated 27th November 2021 u/s 142(1) of the Act and consequently, required to show cause why ₹ 18,58,84,574/- on account of bill of entry for imports (custom) should not be treated as their income. The Petitioner was expected to reply on or before 28th March 2022 since the assessment proceeding was getting time barred on 31st March 2022.

5. It is stated that as the Petitioner had no access to the e-filing portal, on Monday 28th March 2022 the Chartered Accountant (CA) was consulted and on 29th March 2022 the CA and partner

visited the Income Tax Office. A response was accordingly prepared only on 30th March 2022 giving all requisite details. It is stated that, all the bills of entry mentioned in the information summary provided by the AO were accounted for and taxes were paid on the profits computed under the correct PAN. It is the case of the Petitioner that, the Respondent No. 1 refused to take the submissions on record and consequently they tried to scan and deliver it on Respondent No.1's email address but failed on account of the file size being too big. Consequently, the assessment order was passed without considering the Petitioner's response on 30th March 2022 and received by the Petitioner on 4th April 2022. In these circumstances, the Petitioner was constrained to file this Petition on 7th April 2022.

6. This Court by its order dated 11th April 2022 directed the Assessing Officer (AO) to file an affidavit with regard to the allegations of the Petitioner which he did on 6th May 2022. It stated that the Petitioner never proposed to file any letter or submissions on 30th March 2022 or on any other day and therefore question of refusing to accept any letter or submission did not arise.

7. The Respondent No. 1 filed a further Affidavit dated 16th June 2022 dealing paragraph wise with the Petition. In support of his action he stated that, he had no option but to proceed with the reassessment as per the available records on account of time bar expiring on 31st March 2022.

8. This is a peculiar case. There are several unanswered questions. On perusal of the record it is evinced that the Respondent No.1 has failed to make averments in their reply to the Petition, with regard to the status of the *wrong PAN* in their records. The Respondent No. 1 ought to have indicated in their reply whether or not the Petitioner has filed any return of income on the *wrong PAN* since issued and as to when they stopped filing return of income under the *wrong PAN* as they possess this information. This exercise, in our view, could have enabled the department to issue the notice to the registered email address of the assessee and sent an alert on the registered mobile number and prevented the consequences.

9. Be that as it may, the Respondent No. 1 has admittedly failed to follow up after the 30 days' time period that expired pursuant to the issuance of the notice on 31st March 2021. In our view, this whole process could have been avoided had the Respondent No. 1

taken the steps in May 2021, that he took on 25th March 2022 or at least after 27th November 2021 when notice u/s 142(1) was issued. It was the duty of the Respondent No. 1 to have verified whether the *wrong PAN* was registered on the e-filing portal, which was the last return of income filed under the *wrong PAN* and the address and telephone number registered under the *wrong PAN*. Lastly, having met the CA and the partner, he could have extended the time and guided the Petitioner to file written response/submission on before 31st March 2022 in the office of the ITO and accepted a copy of the same by hand delivery considered it and then passed such orders as he deemed fit after due application of mind and law.

10. On examination of the record it is evident that, the Petitioner has filed their audited returns and also claimed to have paid their taxes for the relevant AY 2015-16 & 2016-17 but under the correct PAN viz. PAN AAEFB9418R. In our view the Petitioner ought to have taken all necessary steps to cancel and or surrender the wrong PAN which they failed to do. Both parties are at fault as mentioned hereinabove.

11. Be that as it may, we deem fit to pass the following order -

i. The impugned orders dated 30th March 2022, issued by Respondent No.1 for AY 2015-16 & 2016-17 are quashed and set aside;

ii. The Demand notices dated 30th March 2022, Notices dated 31st March 2022 (i) u/s 274 r/w 271B, (ii) u/s 274 r/w 271F and (iii) Notice dated 30th March 2022 u/s 274 r/w 271(i)(c) of the Act are stayed.

iii. Respondent No.1 is directed to cancel the *wrong PAN* viz. PAN - AAACB2043F in accordance with law and assess/ reassess the Petitioner for AY 2015-16, & 2016-17, if required, after considering the submissions and documents of the Petitioner as sought by the Notice dated 27th November 2021 u/s 142(1) of the Act under the PAN AAEFB9418R in accordance with law;

iv. Rule made absolute in above terms. No costs.

(KAMAL KHATA, J.) **(DHIRAJ SINGH THAKUR, J.)**