IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition 4124 of 2022

M/s. Jain Sewa Bahuuddeshiya Samiti, Yashodham
vs.
Income Tax Officer, Ward-1, Khamgaon & another

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Mr. Saket Bhattad, Advocate for the Petitioner.
Mr. Anand Parchure, Advocate for the Respondents.

CORAM : ROHIT B. DEO AND Y.G. KHOBRAGADE, JJ.
DATE : 19th JANUARY, 2023.

The petitioner is assailing the notice issued under clause (b) of section 148A of the Income Tax Act, 1961 (hereinafter referred to as 'Act' for short) and the order rendered in exercise of powers under clause (d) of section 148A of the Act.

02] The finding, which is recorded by the assessing authority, is that income to the tune of Rs.74,73,800/- (Rupees Seventy Four Lakhs Seventy Three Thousand Eight Hundred Only), which is taxable, has escaped assessment in the assessment year 2015-16.

03] We note that the consequence of the findings recorded in the order impugned is that, the assessee shall be required to pay tax on the amount, which according to the assessing authority, has escaped assessment. It is not that the assessee is without remedy. The Act envisages hierarchy of appeals.

04] However, writ jurisdiction is invoked by the assessee on the ground that the order passed under section 148A(d) of the Act is passed in breach of principles of natural justice. The submission is on the premise that the notice dated 23/03/2022 was received by the assessee by post on 31/03/2022 and the order under clause (d) of section 148A of the Act came to be passed on the same date without giving any opportunity, whatsoever, to the assessee to show cause.

05] The respondents have filed affidavit in response dated 22/08/2022 asserting that the averment that the assessee received the notice only on 31/03/2022 at 1:45 p.m., is incorrect. The respondents have categorically stated that the notice dated 23/03/2022 was sent, and was duly served on the assessee on the email address. We may extract paragraph 4 of the affidavit in response, which reads thus :

> *"4. It is submitted that the petitioner is an assessee having PAN AABTJ1561E and had not filed the Returns for the assessment year 2015-16. The insight portal flagged of the information vide insight instruction 97 through its Secretary dated 28/02/2022 and the case was selected by the ITBA and as per the assessment instruction 22 dated 07/02/2022 notice under section 148A(d) of the Income Tax Act was issued with prior approval of the Principal Chief Commissioner of Income Tax, Nagpur vide letter dated 22/03/2022 and therefore, the notice was issued to the assessee on 23/03/2022, which was duly served on the assessee through email ypsoffice1@gmail.com which was delivered on the petitioner-assessee on 07:18:01 PM on 23/03/2022. The said notice is also sent by speed-post. After giving seven days time to the petitioner-assessee under section 148A(d) of the Act, orders were passed on 31/03/2022 with prior approval of the Principal CCIT, Nagpur and consequently, notice was issued under section 148 on 31/03/2022 with prior approval of PCCIT."*

06] The averments on oath, which were extracted, have not been rebutted by the petitioner and we see no difficulty in accepting the veracity thereof. In this view of the matter, the submission that the notice and the subsequent order falls foul of the principles of natural justice must be rejected.

07] The next submission is that the premise, on which the notice is issued, is unfounded and contrary to the record maintained by the petitioner-society. It is submitted that the allegation that the petitioner deposited Rs.15,0000/- as time deposit, and amount of Rs.59,73,800/- with Khamgaon Urban Cooperative Bank in the year 2014-15 is incorrect inasmuch as the petitioner has no bank account with the said bank. We are afraid that in writ jurisdiction, it would not be permissible for us to consider the said contention, which the petitioner has not raised before the assessing authority. We have already noticed supra, that if any illegal or unjust demand of tax is made, the remedy of the assessee lies elsewhere and not by directly invoking the writ jurisdiction.

08] The petition is dismissed. We, however, clarify that we have not examined the merits of the matter and we leave it for the appropriate authority at an appropriate stage to examine the contention of the petitioner on merits.

JUDGE **JUDGE**

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Signed by:SANDESH DAULATRAO WAGHMARE
Private Secretary to the Hon'ble Judge
Date :21.01.2023 14:45