IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.10316 of 2022
and
W.M.P.Nos.10036 and 10038 of 2022

Farida Leather Company
rep. By its Partner
Mr.Azeez Mujeeb Khan,
29/A, Perianna Maistry Street,
Periamet,
Chennai – 600 003. ...Petitioner/Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Non Corporate Circle-4(1),
121, Nungambakkam High Road,
Chennai.

2.The Principal Commissioner of Income Tax-8,
121, Nungambakkam High Road,
Chennai.

3.The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
New Delhi. ...Respondents/Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records to call for the records on the file of the 1st Respondent and quash the impugned order under Section 148A(d) in DIN and Notice No. ITBA/AST/F/148A/2021-22/1042249192(1), dated 31.03.2022 in PAN AAAFF1375P passed by the 1st respondent for the assessment year 2018-2019 along with the notice in PAN AAAFF1375P dated 16.03.2022 in DIN and Notice No. ITBA/AST/F/148A(SCN)/2021-22/104090499(1), issued by the 1st respondent under Section 148A(b) of the Income-tax Act, 1961 for the Assessment Year (AY) 2018-19 ('Impugned Notice Number 1') and the notice under Section 148 of the Income Tax Act dated 31.03.2022 in DIN and Notice No.ITBA/AST/S/148 1/2021-22/1042271084(1) in PAN AAAFF1375P ('Impugned Notice No.2') issued by the 1st respondent for AY 2018-2019.

For Petitioner : Mr.N.V. Lakshmi

For Respondents : Dr.B.Ramaswamy,
Standing Counsel

ORDER

This Writ Petition has been filed to quash the order of the 1st respondent under Section 148A(d) of the Income-tax Act, 1961, in DIN and Notice No.ITBA/AST/F/48A/2021-22/1042249192(1), dated 31.03.2022 in PAN AAAFF1375P for the assessment year 2018-2019 along with the notice dated 16.03.2022 in DIN and Notice No.ITBA/AST /F/148A(SCN)/2021-22/104090499(1) issued by the 1st respondent under section 148A(b) of the Act, for the assessment Year 2018-2019 and the notice under Section 148 of the Act dated 31.03.2022 in DIN and Notice No.ITBA/AST/S/148 1/2021-22/1042271084(1) issued by the 1st respondent for assessment year 2018-2019.

2.The case of the petitioner is that the respondents issued a show cause notice dated 16.03.2022 to the petitioner under Section 148A(b) of the Act, wherein they have requested the petitioner to file his reply along with supporting documents on or before 23.03.2022. On 22.03.2022, the petitioner made a request for an adjournment through e-portal by way of e-mail and the mail was acknowledged and received by the respondent. After receiving the same, the impugned order came to be passed on 31.03.2022 under Section 148 A (b) of the Act. Para 3 of the said impugned order is as follows:

> "*3.In response to the said notice under Section 148A(b), assessee did not file any reply till 26.03.2022 even though the notice was served by e-mail to its e-mail address faridalc@gmail.com on 16.03.2022 at 06:30:47p.m. and the date of response was fixed on 23.03.2023.*"

3.The petitioner would submit that in the impugned order, nothing has been mentioned regarding the request made by the petitioner and therefore, this Writ Petition has been filed challenging the same on the ground of violation of principles of natural justice.

4.*Per contra*, the learned counsel appearing for the respondents would submit that though the respondents have given an opportunity to the petitioner, the petitioner has not utilized the same, but the fact remains that only one opportunity was provided and therefore, the petitioner made a request for an adjournment.

5.From the perusal of the documents, it appears that notice was issued under Section 148A(b) of the Act to the petitioner through e-mail on 16.03.2022 and the petitioner was requested to file their reply along with supporting documents on or before 23.03.2022. The petitioner made a request for an adjournment on 22.03.2022 through e-mail and the same was acknowledged by the respondents. While passing the impugned order dated 31.03.2022, nothing has been mentioned regarding the request made by the petitioner and stating at Para 3 of the impugned order, that the petitioner did not respond after the receipt of the e-mail dated 16.03.2022. This appears to be contrary to the facts on record before this Court.

6.The respondent had issued the notice dated 16.03.2012 seeking upon the petitioner to file the reply and the same was done with a good intention. When the petitioner made a request for adjournment by virtue of his representation dated 22.03.2022 through e-mail, the respondent is supposed to have granted time for filing the reply and for personal hearing. However, instead of providing opportunity, the respondent had passed the impugned order in a hurried manner on 31.03.2022 without referring the said request made by the petitioner.

7.In the present case, it appears that the respondent had nominally provided the time to the petitioner for filing reply but it should be the real one. Considering the way, in which the notice was issued and the time limit was provided, and also considering the failure of respondent to provide opportunity in spite of the specific request made by the petitioner, it appears that the said impugned order was passed in a hurried manner in violation of principles of natural justice and the same is non sustainable in law. Hence the same is liable to be set aside and accordingly this Court is setting aside the impugned order 31.03.2022. While setting the impugned order, this Court remits the matter back to the Adjudicating Authority to provide opportunity to the petitioner to file the reply and to pass appropriate orders after affording an opportunity of personal hearing.

With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

10.10.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
mps

To

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<u>KRISHNAN RAMASAMY, J.</u>

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