IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.10.2023
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**
**W.P.No.14387 of 2022**
**and**
**W.M.P.No.13608 and 21810 of 2022**

Udayakumar ...Petitioner

Vs.

The Income Tax Officer,
Non-corporate Ward – 17 (7)
BSNL Tower, 16, Greams Road,
Chennai – 600 006. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records and to quash the order passed by the respondent under Section 148 A (d) of the Income Tax Act, 1961 in PAN : AEJPU4655A, DIN-ITBA/AST/F/148A/2022-23/1042507281(1) dated 05.04.2022 for the AY 2015-16 along with the impugned notice No.1 issued by the respondent under Section 148 (b) of the Act in PAN : AEJPU4655A, DIN ITBA/AST/F/148A(SCN)/2021-22/1041333748(1) dated 23.03.2022 for AY 2015-16 and the impugned notice No.2 issued by the respondent under Section 148 of the Act in PAN : AEJPU4655A, DIN : ITBA/AST/S/148A/2022-23/1042589280 (1) dated 06.04.2022 for the AY 2015-16.

For Petitioner : Mr.N.V.Balaji

For Respondent : Dr.B.Ramasamy
Senior Standing Counsel

**ORDER**

The challenge in this Writ Petition is to the orders passed by the respondent under Section i) 148 A dated 06.04.2022, 148 A (b) dated 23.03.2022 and 148 A (d) dated 05.04.2022 and to quash the same.

**2.** The case of the petitioner in brief is as follows:-

i) The petitioner has sold an agricultural land during the financial year 2014-15 relevant to AY 2015-16 along with two others for a total consideration of Rs.74,75,000/-, in which, the petitioner's 1/3$^{rd}$ share being Rs.24,91,667/- and out the said amount, the petitioner deposited Rs.15,00,000/- with City Union Bank.

ii) Whileso, the petitioner received an impugned notice No.1 dated 23.03.2023, to show cause as to why proceedings under Section under Section 148 (b) of the Income Tax Act, 1961 (for short, the Act) should not be initiated against the petitioner/assessee, for, the amount more than Rupees 50 Lakh had escaped assessment for the AY 2015-16.

iii) According to the petitioner, the sale of immovable property was an agricultural property, which is exempted from tax and the respondent treated the total sale proceeds of Rs.74,75,000 as the petitioner's income, eventhough the petitioner is entitled to only 1/3rd i.e. Rs.24,91,667/- Therefore, the information, which is available with the respondent is factually incorrect.

iv) However, the respondent passed the impugned order on 05.04.2022 and also issued consequential impugned notice No.2 on 06.04.2022. Aggrieved by the aforesaid notices dated 23.03.2022, 05.04.2022 and 06.04.2022, the petitioner is before this Court by way of present Writ Petition challenging the same.

**3.** Mr.N.V.Balaji, learned counsel appearing for the petitioner assailed the impugned notice issued under section 148 A (b) dated

23.03.2022 by mainly contending that the same is beyond the period of limitation, and hence, the orders passed under Section 148A (d) dated 05.04.2022 and consequential proceedings initiated in pursuance thereof viz, impugned Noitice No.2 issued under Section 148 A dated 06.04.2022 are also not sustainable.

**3.1** The learned counsel further contended that the impugned show cause notice dated 23.03.2022 is also not sustainable on the ground of violation of principles of natural justice, inasmuch as, the petitioner has not been heard before passing the impugned order. The learned counsel contended that in terms of Section 148 A (b) of the Act, the Assessing officer has to provide an opportunity of being heard to the assessee by serving notice on him giving time not less than seven days but not more than 30 days to the assessee for furnishing his explanation, whereas, in the present case, the respondent issued the show cause notice dated 23.03.2022, calling upon the petitioner to submit response with supporting documents through electronically via. e-proceeding facility on or before 29.03.2022, which notice itself was received by the petitioner only on 28.03.2022, i.e.

one day prior to the date fixed for filing reply and within one day, no assessee can be able to file reply/objections in an effective manner, however, the respondent, despite knowing the fact the show cause notice dated 23.03.2022 was received by the petitioner only on 28.03.2022 passed the impugned order dated 05.04.2022 by stating that the petitioner/assessee did not respond to the show cause notice dated 23.03.2022 and hence, the proposals made in the show cause notice are confirmed.

**3.2** Therefore, the learned counsel contended that the impugned order dated 23.03.2022 is not sustainable, as, the said notice grants shorter response time than that was envisaged by the statute under Section 148 A (b) of the Act and hence, the same deserves to be quashed along with the impugned order dated 05.04.2022 and impugned notice no.2 dated 06.04.2022.

**4.** Per contra, the learned Senior Standing Counsel for the respondent would submit that the show cause notice dated 23.03.2022 was served on the petitioner not only by way of speed post but also through e-portal, as early as on 23.03.2022, and the service of notice on the petitioner through e-portal has to be deemed to be sufficient service and hence, it is stated that once the respondent-Department has issued notice irrespective of any other mode of service, that would be sufficient for the purpose of calculating the 7 days time. Further, it is contended that since the petitioner has not provided e-mail ID, notice was sent by post and in terms of Section 148 A (b) notice dated 23.03.2022 was issued to the petitioner granting not less than 7 clear days for filing response i.e. on or before 29.03.2022, but, the same was received by the petitioner by speed post only on 28.08.2022, however, since the said notice dated 23.03.2022 was also served on the petitioner through e-portal, the respondent deemed the same to be sufficient service and based on the same reckoned the time for filing response, since the petitioner failed to file response/reply within the time stipulated, the respondent proceeded to confirm the proceedings contained in the show cause notice and passed the order dated 05.04.2022 and hence, the orders impugned herein are sustainable in law and that in terms of Section 148 A (b) of the Act, the notice period of 7 days has to be reckoned from 23.03.2022.

**5.** The learned counsel for the petitioner vehemently opposed to the above contention of the respondent and contended that merely by uploading the impugned proceedings in e-portal is not sufficient and in terms of provisions of the Section 282 read with 127 of the Income Tax Act, 1962, mode of service has to be effected either by post or such courier services and notices sent to the assessee through e-portal or e-mail is not recognized as service of notice and this may be in addition to the service of notice by post or courier service. Therefore, the learned counsel contended that service of notice by uploading the same through the e-portal or e-mail cannot be deemed to be sufficient service and in terms of Section 282 read with 127 of the Act notice has to be served by post and in the present case, though the show cause notice was dated 23.03.2022, the same was received by the petitioner only on 28.03.2022 and since the petitioner has not been granted sufficient time to file his reply and has been deprived of the opportunity of being herein, the impugned orders are unsustainable, Hence, the learned counsel prays for setting aside the impugned orders.

**6** I have given due considerations to the submission made by the learned counsel appearing for the petitioner and the learned Senior Standing Counsel for the respondent and perused the materials on record.

**7.** The main challenge in the present case is with regard to the issuance of notice under Section 148 A (b) dated 23.03.2022 both on the ground of limitation and in violation of principles of natural justice and that since the said notice dated 23.03.2022 is not sustainable, the orders passed in pursuance thereof are, viz., the impugned orders under Section 148 A (d) dated 05.04.2022 and Section 148 A dated 06.04.2022 are also unsustainable.

**8.** Before adverting to the issue raised in this Writ Petition, it would be beneficial to refer to Section 148 A (b) and Section 282 (1) read with Section 127 of the Income Tax Act, which are extracted hereinbelow:-

> **" Section 148 A (b)**
>
> An assessing officer shall, before issuing any notice under Section 148-

provide an opportunity of being heard to the assessee by serving upon him a notice to show cause within such time, as may be specified in the notice, being note less than serven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why, a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a).

Section 282 **Service of notice** (1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named, —

a) by post or by such courier services as may be approved by the Board; or

b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purpose of service of summons; or

c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000)

or

d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

**127** .(1) **[Service of notice, summons, requisition, order and other communication.** For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2)

(2) The addresses referred to in sub-rule (1) shall be—

a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282—

i) the address available in the PAN database of the addressee; or

ii)the address available in the income-tax return to which the communication relates; or

iii)the address available in the last income-tax return furnished by the addressee; or

iv)in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:

**Provided** that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the

> purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication:"

**9.** Reverting back to the present case on hand, it is the contention of the petitioner that the notice issued under Section 148 A (b) dated 23.03.2022 by post was received by the petitioner only on 28.03.2022 i.e. one day, prior to the time fixed for filing reply/objection and therefore, according to the petitioner, in terms of the said provision, notice granting 7 days' time has not been provided. Per contra, it is the contention of the learned Senior Standing Counsel for the respondent that once notice has been issued, either by adopting any other mode of service, the date has to be reckoned from the date on which, such notice was issued.

**10.** I am unable to accept the contention of the learned Senior Standing Counsel for the respondent, for, the terms '"Notice has been Issued" attains finality only when the notice has been issued/served on the assessee. In the present case, though the show cause notice calling forth petitioner's reply within 29.03.2022 was dated 23.03.2022, unfortunately, the said notice was received by the petitioner/assessee only on 28.03.2022. Therefore, from 28.03.2022, the period of 7 days has to be reckoned, whereas, in the present case, the respondent has not considered the said aspect and proceeded to pass orders by stating that the petitioner failed to respond to the notice dated 23.03.2022 and hence, the proposals contained in the show cause notice dated 23.03.2023 is confirmed.

**10.1** Therefore, as rightly pointed out by the learned counsel for the petitioner, the impugned order suffers from violation of principles of natural justice, since it blatantly violates the provisions of Section 148 (b) of the Act, an Assessing officer has to give time not less than seven days but not more than 30 days to the assessee for furnishing his explanation and further, the respondent, despite knowing fully well that the notice served on the petitioner by post was received by him only 28.03.2022, ought to have granted further time, in terms of Section 148 (b) of the Act of not exceeding 30 days, and waited for the petitioner's reply and before passing the impugned order, heard the petitioner and in the absence of same having been failed to be done by the respondent, not only the impugned Notice dated

23.03.2022 has to be quashed and entire proceedings, initiated in furtherance of the same are also to be quashed.

**10.2** Therefore, the contention of the learned Senior Standing Counsel for the respondent that notice served on the petitioner through e-portal on 23.03.2022, and the same has to be deemed to be sufficient service and the period of 7 days has to be reckoned from such date of issuance has to be brushed aside, since, in terms of Section 282 (1) notice can be served only by adopting the mode of service by post or such other courier service and notice sent by adopting the mode of service by e-mail or e-portal and the same can be considered and adopted in addition to the service effected by physical mode.

**10.3** Therefore, this Court is of the view that the show cause notice dated 23.03.2022 issued under Section 148 A (b) of the Act is not sustainable.

**10.4** So far as the sustainability of the impugned order on the limitation aspect is concerned, since the petitioner/assessee has taken steps to file returns by showing the source of income and the manner of utilization of sale proceeds of agricultural land, as the said issue pertains to the AY 2015-16, obviously, the period of limitation for the said assessment year has come to an end even for service of notice under Section 148 A of the Act on 31st March, 2021, this Court is of the view that the impugned proceedings are not sustainable on limitation aspect as well, inasmuch, as the Department failed to take appropriate action at the appropriate time within the limitation period of six years, which is not directory in nature but mandatory, and the respondent-Department having failed to do so, they cannot, all of sudden, on one fine day, attack the petitioner/assessee. Further, this Court would like observe herein that the Income Tax Department cannot always have the sword of Damocle's dangling over an assessee all the time.

**11.** At this juncture, the learned Senior Standing Counsel for the respondent expressed concern over huge deposit made by the petitioner in his account. Insofar as this issue is concerned, this Court feels that if the said huge amount is still lying in the accounts of the petitioner, it is open to the respondent-Department to proceed with the same in accordance with law for the subsequent years, if it is permissible in law.

**12.** Accordingly, this Writ Petition is allowed, the impugned order dated 23.03.2022 is quashed. When the show cause notice dated 23.03.2022 itself is quashed, all other consequential proceedings which were initiated in furtherance of the show cause notice are also liable to be quashed and accordingly, the same are also quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

**31.10.2023**

sd

Index : yes/no
Neutral Citation : yes/no

To

The Income Tax Officer,
Non-corporate Ward – 17 (7)
BSNL Tower, 16, Greams Road,
Chennai – 600 006.

**Krishnan Ramasamy,J.,**

sd

**W.P.No.14387 of 2022**

**31.10.2023**