IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

Coram

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.32677 of 2022
and W.M.P.No.32066 of 2022

D.R.Jayakothandaraman .. Petitioner

vs

1.Government of India
Assessing Officer,
Minister of Finance,
Income Tax Department,
National Faceless Assessment Centre,
New Delhi.

2.The Assistant Commissioner of Income,
Non Corp.Circle 3(1) CHE,
Room No.623, Wanaparthy Block – VI Floor,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to the order dated 30.03.2022 passed in DIN & Notice No : ITBA/AST/F/148A/2021-22/1042128037(1), and the notice dated 31.03.2022, under Section 148 of Income Tax Act, 1961, in DIN &

Notice No : ITBA/AST/S/148_1/2021-22/1042279645(1), on the file of the second respondent and to quash the same.

For Petitioner : Mr.P.Raja

For Respondents : Mr.Prabhu Mukunth Arunkumar
Junior Standing Counsel

ORDER

1. The petitioner has challenged the impugned order passed by the second respondent dated 30.03.2022 under clause (d) of Section 148A of the Income-Tax Act, 1961 (for short, “the Act”).

2. Under the impugned order, the second respondent has intimated the petitioner that their case is a fit case for issuance of notice to them under Section 148 of the Act for the assessment year 2015-2016. Section 148 of the Act deals with the issuance of notice by the Department to the petitioner where the income of the petitioner has escaped assessment.

3. The petitioner has raised the following grounds challenging the impugned order passed under Section 148A of the Act:-

(a) The impugned order issued by the second respondent is a nullity and the same has no relevancy to the petitioner's PAN number though in the notice the name of the petitioner has been wrongly mentioned as Muktha Seth, whereas the petitioner name is Devarajulu Jayakothandaraman.

(b) The petitioner has not replied on 24.03.2022 to the notice sent by the second respondent under Section 148 of the Act on 17.03.2022. According to the petitioner, the second respondent has dispatched the notice on 19.03.2022 though the said notice is dated 17.03.2022. The petitioner claims that he received the notice only on 21.03.2022 and has replied to the same on 24.03.2022. The petitioner also claims that his reply was received by the second respondent on 30.03.2022. However, according to the petitioner, the reply has not been considered in the impugned order even the said impugned order was passed only at 6.30 p.m. by the second respondent on 30.03.2022.

(c) According to the petitioner, he was entitled to send the reply through e-portal of the second respondent but it sent the same physically due to the fact that his PAN number was inactive on the date of the reply dated 24.03.2022. The petitioner also contends that the property disclosed by the second respondent in the notice issued under Section 148A of the Act is not his property and he is no way concerned with the same.

(d) The petitioner has also given detailed reply to the notice issued by the second respondent under Section 148A(b) of the Act on the ground of paucity of time. Therefore, as seen from the grounds raised, the petitioner has challenged the impugned order passed under Section 148A(d) of the Act on the ground of violation of principles of natural justice. The petitioner has also challenged the consequential notice issued by the second respondent under Section 148A of the Act dated 31.03.2022.

4. A Counter affidavit has been filed by the second respondent denying the allegations of the petitioner. They reiterated the contents of the impugned order as well as the impugned consequential notice. They have stated that the present writ petition is not maintainable as the same was at the stage of issuance of notice under Section 148 of the Act. This Court cannot go into the

merits of the controversy. According to them, the present writ petition is pre-mature and instead of the petitioner participating in the impugned proceedings, this writ petition is filed pre-maturely.

5. However, in the counter affidavit, they have admitted the fact that the name of the assessee has been wrongly mentioned in the impugned order and they claim that it is a typographical mistake committed by them. They reiterated the contents of the counter affidavit by stating that the petitioner did not send any reply to the notice issued under Section 148A(b) of the Act. They also stated that the assessment pertains to the year 2015 – 2016 and, therefore, the reasons given by the petitioner for not submitting the reply in the e-portal of the second respondent to the notice issued under Section 148A(b) have to be rejected by this Court.

6. The reply sent by the petitioner to the notice issued under Section 148A(b) of the Act was received only on 30.03.2022 and, therefore, since the petitioner has not replied within seven days from 17.03.2022, which is the date of notice sent by the second respondent, the second respondent rightly observed in the impugned order that no reply was sent by the petitioner.

7. The petitioner has not filed any proof or evidence in support of his contention that the said property is not owned by him and, therefore, the said contention will also have to be rejected. The petitioner has also not revealed his new PAN number in the affidavit filed in support of this writ petition.

8. Admittedly, the reply sent by the petitioner to the second respondent to the notice sent by them dated 17.03.2022 under Section 148A(b) of the Act. The said reply is dated 24.03.2022. The petitioner has produced proof in the typed-set of papers along with this writ petition to confirm that the said reply dated 24.03.2022 was dispatched on 25.03.2022 by the petitioner which is received by the second respondent on 30.03.2022 as seen from the acknowledgement card.

9. Learned counsel for the petitioner has also produced photocopy of the postal receipt dated 25.03.2022 which confirms that the reply dated 24.03.2022 sent by the petitioner to the second respondent was dispatched on 25.03.2022. The second respondent

has also admitted in the counter affidavit filed by them before this Court that the reply dated 24.03.2022 was received by them only on 30.03.2022. The order under Section 148A(d) of the Act was passed by the second respondent only at 6.30 p.m. on 30.03.2022 as seen from the impugned order. Only during office hours on 30.03.2022, the second respondent would have received the reply dated 24.03.2022 sent by the petitioner. Therefore, the reply dated 24.03.2022 sent by the petitioner was very much available on record with the second respondent before passing the impugned order dated 30.03.2022 which was passed at 6.30 p.m. on the very same day.

10. Having received the reply on 30.03.2022, the second respondent ought not to have observed in the impugned order that no reply was received from the petitioner. The petitioner has contended before this Court that he is not the owner of the property for which the second respondent had sought for an explanation from the petitioner. The explanation sought for is found in notice dated 17.03.2022 issued by the second respondent under Section 148(b) of the Act. According to the second respondent, they have issued notice that the petitioner has sold immovable properties to the tune of Rs.3.77 crores and Rs.2.70 crores and also made cash deposits of

Rs.14,19,500/- in the Savings Bank account during the year under consideration. However, as observed earlier, the petitioner has categorically contended before this Court that he is not the owner of the immovable properties which is reflected in the annexure to the notice issued by the second respondent under Section 148A(b) of the Act. The petitioner has sent the reply to the second respondent which is with regard to the same and has categorically stated that he does not hold any property in his name and neither has he sold any property. He has also stated that someone is misusing his name and address and he requested the second respondent to drop the proceedings initiated against him pursuant to the notice issued under Section 148A(b) of the Act dated 17.03.2022. In the impugned order dated 30.03.2022 as well in the consequential impugned notice dated 31.03.2022 issued by the second respondent, the reply dated 24.03.2022 sent by the petitioner is not reflected and the same has not been taken into consideration by the second respondent before passing the impugned order dated 30.03.2022. Having received the reply even prior to the issuance of the impugned order dated 30.03.2022 at 6.30 p.m., the second respondent ought to have considered the same on merits and in accordance with law. Even in the impugned order dated 30.03.2022 passed under Section 148A(d) of the Act, admittedly, the name of the assesse is wrongly mentioned as Muktha Seth and the PAN number is different. The petitioner has categorically contended before this Court that his PAN number is different and is not the PAN number mentioned in the impugned order dated 30.03.2022. The respondents have accepted the mistake in the counter affidavit filed by them before this Court but however they had stated that there is typographical mistake. When a categorical stand has been taken by the petitioner that he is not the owner of the subject property which is also disclosed in his reply dated 24.03.2022, which was admittedly received by the second respondent on 30.03.2022 even prior to passing of the impugned order dated 31.03.2022 at 6.30 p.m., this Court is of the considered view that the second respondent ought to have given due consideration to the reply dated 24.03.2022 sent by the petitioner in the impugned order dated 30.03.2022, however since the same has not been given due consideration and that too when the impugned order has wrongly disclosed the name of Muktha Seth and wrong PAN number has been given whereas the petitioner's name is Devarajulu Jayakothandaraman and his PAN number is different, this Court is of the considered view that by total non-application of mind and by violating the principles of natural justice, the second respondent has passed the impugned order under Section 148A(d) of the Act and has erroneously issued the consequential notice dated 31.03.2022 to the petitioner under Section 148 of the Act and, therefore, the impugned order as well as the consequential notice will have to be quashed by this Court and remand it back to the second respondent for fresh consideration on merits and in accordance with law.

11. Since the petitioner claims that he was not given sufficient time to send detailed reply to the notice dated 17.03.2022, this Court is of the considered view that the petitioner must be given an opportunity to send additional reply to the one already sent on 24.03.2022 to the second respondent.

12. For the foregoing reasons, the impugned order dated 30.03.2022 as well as the consequential order dated 31.03.2022 issued by the second respondent are hereby quashed and the matter is remanded back to the second respondent for fresh consideration on merits and in accordance with law and the second respondent is further directed to permit the petitioner to submit an additional reply within a period of two weeks from the date of receipt of a copy of this order. On receipt of said reply from the petitioner within the

stipulated time, the second respondent shall pass final orders on merits and in accordance with law after giving due consideration to the reply as well as the additional reply within a period of one month in accordance with law as prescribed under Section 148(d) of the Act.

13. With the aforesaid direction, this writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

19.01.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To
1.The Assessing Officer,
Minister of Finance,
Income Tax Department,
National Faceless Assessment Centre,
New Delhi.

2.The Assistant Commissioner of Income,
Non Corp.Circle 3(1) CHE,
Room No.623, Wanaparthy Block – VI Floor,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

ABDUL QUDDHOSE,J.

ssm

W.P.No.32677 of 2022

19.01.2023