BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.9957 of 2023
and
W.M.P(MD) Nos.8754 & 8757 of 2023

M/s.Aurolab Trust,
Represented by its President,
Thulasiraj Ravilla,
No.72, Kuruvikaran Salai,
Gandhi Nagar, Madurai – 625 020. .. Petitioner

Vs.

The Assistant Commissioner of
Income Tax, Exemptions,
Coimbatore,
May Flower Mid City Building,
1510, Trichy Road,
Coimbatore – 641 018. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records on the file of the respondent relating to the impugned notice under Section 148A(b) dated 13.03.2023 having DIN and Notice No. ITBA/AST/F/148A(SCN)/2022-23/1050694814(1) in PAN AAATA1142P for Asst. Year 2019 - 2020 and the impugned order under

Section 148A(d) of the Income Tax Act, 1961 dated 23.03.2023 having DIN and Notice No. ITBA/AST/F/148A/2022-2023/1051185337(1) in PAN: AAATA1142P for Asst. Year 2019 - 2020 passed by the respondent in pursuance to the notice under Section 148A(b) and the consequential notice under Section 148 of the Income Tax Act, 1961 dated 24.03.2023 having DIN and Notice No.ITBA/AST/S/148_1/2022-23/1051214093(1) in PAN: AAATA1142P for Asst.Year 2019-20 issued by the respondent in furtherance to the order under Section 148A(d) and quash the same as invalid in the eyes of law.

For Petitioner	:	Mr.Ravi Kannan
For Respondent	:	Mr.N.Dilip Kumar Senior Standing Counsel

ORDER

This writ petition is filed for the issue of a Writ of Certiorari, to call for the records on the file of the respondent relating to the impugned notice under Section 148A(b) dated 13.03.2023 having DIN and Notice No.ITBA/AST/F/148A(SCN)/2022-23/1050694814(1) in PAN AAATA1142P for Asst. Year 2019 - 2020 and the impugned order under Section 148A(d) of the Income Tax Act, 1961 dated 23.03.2023 having DIN and Notice No. ITBA/AST/F/148A/2022-2023/1051185337(1) in PAN: AAATA1142P for Asst. Year 2019 - 2020 passed by the respondent in pursuance to the notice under Section 148A(b) and the consequential notice under Section 148 of the Income Tax Act, 1961 dated 24.03.2023 having DIN and Notice No.ITBA/AST/S/148_1/2022-23/1051214093(1) in PAN: AAATA1142P for Asst.Year 2019-20 issued by the respondent in furtherance to the order under Section 148A(d) and quash the same as invalid in the eyes of law.

2. The short facts that are required for disposing of the writ petition are as follows:

The petitioner has filed his return for the assessment year 2019-2020 on 30.10.2019 admitting a total income of Rs.101,99,68,920/-. The petitioner had claimed an exemption under Section 11 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in the said return. This return was processed under Section 143(1) of the Act vide an intimation under Section 143(1) dated 17.07.2020. The petitioner would submit that the time to select the return of income had expired on 31.03.2021 and the respondent had not selected the return of income filed by the petitioner for the assessment year 2019-20.

Thereafter, the respondent had straightaway issued a notice under Section 148A(b) of the Act dated 13.03.2023 asking the petitioner to show cause as to why a notice under Section 148 may not be issued for the assessment year 2019-20. In the show cause notice, it has been alleged that the petitioner has provided misinformation regarding the registration under Section 12A of the Act and has also further wrongfully claimed exemption under Section 11 of the Act. Challenging this notice, the petitioner is before this Court.

3. Mr.Ravi Kannan, learned counsel appearing for the petitioner would submit that the order under Section 148A(d) of the Act can be passed only after providing a personal hearing to the petitioner/assessee, which has not been done in the instant case. He would submit that a reading of Section 148A(d) of the Act would indicate that the legislative intent was to provide a personal hearing. He would also submit that the issue is covered by the judgment of this Court in W.P.(MD) No.21357 of 2022, dated 16.11.2022.

4. However, Mr.N.Dilip Kumar, learned Senior Standing Counsel, appearing for the respondent would refute the above contention and would submit that the words “providing an opportunity of being heard” would also include a case of submission of written arguments which in the instant case, the petitioner has done.

5. Learned Senior Standing Counsel for the respondent further submitted that even in the reply to the impugned show cause notice, the petitioner has clearly stated that only in case of any doubt, the respondent should offer an opportunity to the petitioner to clarify the same, that is, to give a personal hearing. Therefore, he would submit that there is nothing wrong in the impugned order. However, the learned Senior Standing Counsel would fairly submit that the order dated 16.11.2022 passed by this Court in W.P.(MD) No.21357 of 2022 has not been challenged to date.

6. In the light of the above, this Writ Petition is allowed, the impugned orders are quashed and the matter is remitted back to the

respondent. The respondent is directed to dispose of the petition filed by the petitioner within a period of six weeks from the date of the first hearing. On the date given, the petitioner shall positively appear before the respondent. It is needless to state that reasonable notice period should be given to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

25.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

abr

To

The Assistant Commissioner of
Income Tax, Exemptions,
Coimbatore,
May Flower Mid City Building,
1510, Trichy Road,
Coimbatore – 641 018.

P.T.ASHA, J.

abr

W.P.(MD) No.9957 of 2023

Dated: 25.04.2023