

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

104

2023:PHHC:148355-DB

CWP-12994-2022

Date of Decision: 22.11.2023

Nilam Mantri

.....Petitioner(s)

Versus

Income Tax Officer, Ward-2(1), Faridabad

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Nikhil Goyal, Advocate,
and Mr. Rana Gurtej Singh, Advocate,
for the petitioner.

Mr. Saurabh Kapoor, Sr. Standing Counsel,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

1. Prayer in the present writ petition filed under Articles 226 and 227 of the Constitution of India is for quashing notice under Section 148A(b) of the Act dated 19.03.2022 (Annexure P-3) alongwith notice dated 04.04.2022 issued under Section 148 of the Income Tax Act, 1961 (in short 'the Act') (Annexure P-1) and the order dated 04.04.2022 passed under Section 148A(d) of the Act (Annexure P-2) alongwith .

2. The respondent-Revenue was put to notice regarding the averments made in Para Nos.2, 3 and 4 of the writ petition vide order dated 02.06.2022 in spite of which written statement has not been filed on merits. Short reply dated 27.10.2022 has been filed pleading that the non-rebuttal of any averment made in the writ petition may not be construed as admission on the part of the answering respondent. The answering respondent has further sought leave to file additional reply, if found necessary, at the later stage of proceedings.

3. The petitioner has also filed his replication dated 10.01.2023. Thus, it is to be noticed that the factual averments made in Para Nos.2 to 4 of the writ petition have not been specifically controverted. The grouse as such of the petitioner mainly via representation filed dated 20.04.2022 (Annexure P-7) was that the notice was issued on 19.03.2022 under Section 148A(b) of the Act which was allegedly served through registered e-mail as well as speed post. The claim of the petitioner is that the said notice was never served upon the assessee and, therefore, an opportunity is required to be granted under the said Section. The necessary pleadings as such regarding this fact have also been given in para No.5 of the writ petition.

4. As noticed above, the respondent has chosen not to file para-wise written statement to specifically controvert the said averments regarding the request also that the notice dated 19.03.2022 (Annexure P-3) was never served and, therefore, the petitioner has been prejudiced on that account.

5. We have gone through the said notice wherein on the basis of the information available with the Revenue, it was noticed that there was a sale transaction of immovable property for sale consideration of Rs.1,21,00,000/- during the relevant assessment year 2015-16. In such circumstances, the petitioner had been put to notice that whether it is taxable income or not and the reason was to be given alongwith supporting documents apart from submitting the calculation of capital gain arising out of the sale of the property.

6. In such circumstances, we are of the considered opinion that the notice dated 19.03.2022 not having been specifically served and order having been passed thereafter on 04.04.2022 without giving an opportunity would

violate the principles of natural justice and also the procedure which is

required under law. The petitioner has placed sufficient material to show that apparently the notice and the subsequent order dated 04.04.2022 was served thereafter upon the petitioner. In such circumstances, we are of the considered opinion that an opportunity to file reply to show cause notice is required to be given and accordingly the subsequent orders dated 04.04.2022 are not liable to be sustained on this short ground since sufficient material by way of reports of the Post Office regarding the dispatch of documents as such have also been placed on record. Replication filed also has not been controverted by filing any rejoinder though even a period of more than 10 months has gone by when the replication was taken on record. An adverse inference is, thus, to be drawn against the respondent-Revenue.

7. Accordingly, the present writ petition is allowed with Rs.10,000/- as costs imposed upon the respondent-Revenue, to be paid to the petitioner. Notice and order, both dated 04.04.2022 (Annexures P-1 and P-2) are quashed. The petitioner shall file reply to the notice within a period of 15 days from today and it is open to the Revenue to proceed in accordance with law, thereafter.

(G.S. SANDHAWALIA)
JUDGE

22.11.2023
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No