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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 14.02.2023

+ **W.P.(C) 1243/2023 & CM APPL. 4720/2023**

INDUS VALLEY PARTNERS INDIA PVT. LTD. Petitioner

Through: Mr Salil Kapoor with Mr Sumit
Lalchandani, Ms Ananya Kapoor and
Mr Vibhu Jain, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME
TAX CIRCLE 10-1 & ANR.

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. On the previous date, we had heard the matter at some length, whereupon we had etched out the broad controversy with regard to the mandatory period for filing a reply to the notice issued under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"] which was required to be provided.
2. As noted on that date i.e., 01.02.2023, it was the contention of Mr Salil Kapoor, who appears on behalf of the petitioner, that the minimum statutory timeframe, as indicated in clause (b) of Section 148A of the Act, was not provided.

2.1 For the sake of convenience, the relevant parts of the order dated 01.02.2023 are set forth hereafter:

“2. This writ petition concerns Assessment Year (AY) 2018-19.

3. Mr Salil Kapoor, who appears on behalf of the petitioner/assessee, says that the period granted to the petitioner for filing a reply via notice dated 10.03.2022, issued under Section 148A(b) of the Income Tax Act, 1961 [in short, “the Act”], was less than the mandatory period, i.e., seven days.

3.1. In support of his plea, Mr Kapoor has drawn our attention to the email dated 12.03.2022 to show that the notice was served on that date. To be noted, the aforementioned notice dated 10.03.2022 called upon the petitioner to file its response “on or before 17.03.2022”.

4. It cannot be disputed that the requirement under Section 148A(b) of the Act is to accord time to an assessee “not less than seven days and but not exceeding thirty days from the date on which the notice is issued...”.

5. Mr Kapoor submits that the expression “not less than seven days” commences from the date when the notice was issued, which will take the time required to be granted beyond 17.03.2022.

*5.1 In support of his plea, Mr Kapoor has relied upon the judgment of the Supreme Court rendered in **Commissioner of Income-tax v. Braithwaite & Co. Ltd** (1993) 67 Taxman 155 (SC). In particular, reference is made to the observations made in paragraph 7 of the said judgment, which read as follows:*

*“7. We are of the view that on the plain reading of the proviso to rule 1(v), Second Schedule it is clear that in order to claim benefit of the said provision the borrowed money has to be repaid during the period of more than seven years. **The only interpretation which can be given to the expression 'during a period of not less than seven years' is that the said period should go beyond seven years. The reasoning is simple. The period of seven years would not complete till the last 'minute' or even the last 'second' of the said period are counted. In other words, till the last minute of the seven years' period is completed the period remains less than seven years.** In the present case the agreement was entered on 1-8-1964. The last instalment was to be paid on 31-7-1971. The seven years were to complete at 12 A.M. (between the night of 31-7-1971 and 1-8-1971). Even if the loan was paid back at 11.59 P.M. on 31-7-1971 the period would be less than seven years by one minute. It is, therefore, obvious that the period of 'not less than seven years' can only mean till after the completion of seven years. We, therefore, hold period of seven years does not mean repayment 'during a period of not less than seven years'. To claim the benefit under rule 1(v) of the Second Schedule the repayment of the borrowed money must be during a period which is more than seven*

years.”

[Emphasis is ours]

6. We may note that Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondent/revenue, has indicated, albeit, across the bar, that the notice dated 10.03.2022, issued under Section 148A(b) of the Act, would have been uploaded on the designated portal, and therefore, the reliance on the email dated 12.03.2022 by the petitioner/assessee will not help its cause.

7. In this context, we have queried Mr Maratha as to whether a real-time alert was sent to the petitioner via SMS.

7.1. Mr Maratha says that he will ascertain as to whether or not the notice was, firstly, uploaded on the designated portal and also whether a real-time alert was sent to the petitioner via SMS.

8. We may note that Mr Kapoor has conceded that there is no assertion, even in the writ petition or in the reply to the notice dated 10.03.2022, that the petitioner/assessee did not receive a real-time alert via SMS.

9. That said, the impediment which is in the way of the respondent/revenue is as to whether the expression “not being less than seven days” appearing in clause (b) of Section 148A of the Act should be interpreted in the manner in which Mr Kapoor has put forth before us.

10. At this stage, Mr Kapoor also points out that the digital signatures were appended on the notice, issued under Section 148A(b) of the Act, only on 11.03.2022 i.e., on Friday.

10.1 Although the date is not visible, since there is a reference to the day, it can be concluded that the date, as per the calendar would be 11.03.2022.

11. In any event, Mr Maratha will return with instructions on the aspects indicated above.

12. Issue notice.

12.1 Mr Maratha accepts notice on behalf of the respondents/revenue.

13. List the matter on 14.02.2023.”

3. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondents/revenue has returned with instructions.

3.1 Mr Maratha says, that the notice dated 10.03.2022 issued under Section 148A(b) of the Act was dispatched to the petitioner, twice over.

3.2 It is the submission of Mr Maratha, that the dispatch, on 10.03.2022, was made without digital signatures, and thereafter, when it was dispatched once again i.e., on 11.03.2022, the discrepancy concerning absence of digital signatures was corrected.

4. Pertinently, what we have on record is only a notice dated 10.03.2022, with an “Annexure” appended thereto, which is digitally signed on 11.03.2022. The instructions conveyed by Mr Maratha unequivocally establish that the notice dated 10.03.2022 was dispatched twice. The notice dated 10.03.2022, concededly, required the petitioner to file its response “on or before 17.03.2022”. Therefore, undoubtedly, the statutory requirement of giving seven (7) clear days for filing the response was not met.

5. We are in agreement with Mr Kapoor, that the ratio of the judgment in ***Commissioner of Income-tax v. Braithwaite & Co. Ltd*** (1993) 67 Taxman 155 (SC) would be applicable in the instant case, as the language of the provisions considered by the Supreme Court in that judgment is *pari materia* with the language used in clause (b) of Section 148A of the Act.

6. Therefore, counsel for both the parties agree, that the best course forward would be to set aside the impugned order dated 30.03.2022 passed under Section 148A(d) of the Act, and the consequent notice dated 31.03.2022 issued under Section 148 of the Act.

6.1 It is ordered accordingly.

7. The Assessing Officer (AO) will be at liberty to pass a fresh order. However, before proceeding further, the AO will furnish the information/material which is in his/her possession, and is relevant for the purpose of triggering the reassessment proceedings against the petitioner.

8. In case any such information/material is furnished, the petitioner will have liberty to file a supplementary reply. For this purpose, the AO will grant two weeks to the petitioner.

9. The AO will also accord personal hearing to the authorized representative of the petitioner.

10. Needless to add, nothing stated hereinabove will impact the merits of the case.
11. The writ petition is disposed of in the aforesaid terms.
12. Consequently, the pending application shall stand closed.
13. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

FEBRUARY 14, 2023

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[Click here to check corrigendum, if any](#)