IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9288 of 2023

==

Naubind Singh Son of Late Dallu Singh, Resident of Village- Simira, Police Station- Parsa Bazar, District- Patna- 8004453.

... ... Petitioner/s

Versus

1. The Principal Commissioner of Income Tax-I, Bihar Revenue Building, Virchand Patel Marg, Baily Road, Patna-800001.
2. The Income Tax Officer, Ward - 5(1), Patna. Lok Nayak Jai Prakash Building, New Dakbanglow, Road, Patna-800001.

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Mr.Chiranjiva Ranjan, Advocate
For the Respondent/s : Mrs.Archana Sinha @ Archana Shahi, Sr. Counsel

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-09-2024

The petitioner is aggrieved with Annexure- 5 order passed under Section 148A(d) of the Income Tax Act, 1961.

2. The specific contention of the petitioner is that the petitioner's reply was not considered and later extension of the time for filing a reply, was never communicated to him.

3. The learned Counsel for the petitioner also relies on a judgment of the Delhi High Court in the case of ***Meenu Chaufla vs. Income Tax Officer Ward 49(1), Delhi [W.P. (C)***

no. 7854 of 2022].

4. The fact remains that the petitioner was issued with a notice under Section 148A(d) by Annexure-1 dated 13.03.2023. The petitioner was granted ten days time, that is up to 23.03.2023 for filing a reply. The petitioner filed an application for adjournment on 23.03.2023 seeking one month time or any appropriate time for filing the reply. The petitioner was issued with Annexure-3 notice granting him time up to 14.04.2023.

5. Learned Counsel further submits that the petitioner has not received Annexure- 3 notice; as stated in the writ petition. But the petitioner does not speak of the date on which he received Annexure-3, which has been produced along with the writ petition. Annexure-4 reply is said to have been filed on 22.04.2023, which is admitted by the department in the counter affidavit; but after the order was passed.

6. The decision relied on by the learned Counsel for the petitioner found that the Assessing Officer can *suo moto* provide up to thirty days period when assessee responds to the show cause notice, which period can also be extended and such period given to the assessee is excluded from computing the period of limitation, for issuance of notice under Section

148A(d) of the Act.

7. In the cited decision of ***Meenu Chaufla*** (supra), the application of adjournment filed by the assessee was not rejected or responded to. The contention of the assessee was also that they had filed a reply on 27.03.2022 but the Online portal itself was closed by the respondents on 24.03.2022. Further, the assessee though could not upload the reply; submitted it through an e-mail addressed to the Assessing Officer. The impugned order was passed after the e-mail was received by the Assessing Officer. The non-consideration of the reply received was also found to have vitiated the order challenged therein. The instant case differs on facts distinctly.

8. The petitioner as has been noticed, submits that Annexure- 3 was never received by him but produced it along with the writ petition. Likewise, Annexure- 4 reply is said to have been filed on 22.04.2024, after the order was passed. The petitioner was granted time up to 14.04.2023 and the order was passed only on 21.04.2023. There is no question of any remand being made for the purpose of hearing.

9. We also notice that the order issued under Section 148A(d) of the Act is not conclusive since, now the petitioner will be issued with a notice under Section 148.

10. The counter affidavit of the respondents indicates that a notice has already been issued under Section 148 on 21.04.2023.

11. The petitioner would be entitled to raise all contentions in reply to the said show cause notice, if the same has not been concluded till now.

12. The writ petition stands dismissed with the above liberty.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Harsh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2024
Transmission Date	