IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 198 OF 2024

Ravi Savur ...Petitioner

Versus

Assistant Commissioner of Income Tax,
Circle 42(2)(1) & Ors. ...Respondents

Mr. Madhur Agrawal i/b Mr. Atul K Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K. R. SHRIRAM &
Dr. NEELA GOKHALE, JJ.
DATED : 10th MAY 2024

P.C. :

1 Petitioner is impugning the notice dated 11th February 2023 and 15th March 2023 issued under Section 148A(b) of the Income Tax Act 1961 (the Act) as well as the assessment order dated 31st March 2023 passed under Section 148A(d) of the Act.

2 Petitioner is an individual, a person of Indian origin and presently a British citizen and a non-resident of India. It is petitioner's case that petitioner did not file return of income for Assessment year 2016-17 because he was not required to file. On 26th February 2023, petitioner came to know from his sister that one Mr. Navin Sharma, Income Tax Officer, had informed her that the department had sent a message to petitioner on Income-tax portal, so petitioner should access it and respond to the said

message. Thereafter, on 27th February 2023, petitioner tried to login to the department portal using his PAN and Password which he had used earlier but his password did not work and he was unable to access the portal. Petitioner made innumerable attempts to reach the department but there was no response. Finally, petitioner was able to speak to Mr. Sharma, who gave the phone to another lady, presumed to be the Assistant Commissioner of Income Tax, Mumbai (Respondent No.1), who informed petitioner that a notice dated 11th February 2023 was sent to petitioner via ITBA portal. Petitioner informed respondent no.1 that he has been a non resident for a number of years and offered to send a copy of his passport and that he was unable to access the ITBA portal. Thereafter, respondent no.1 informed petitioner that his case may be required to be transferred to NRI Division. On the same day, petitioner emailed a copy of his British passport on the email address given by respondent no.1. However, it was returned undelivered.

3 On 28th February 2023, petitioner informed Mr. Sharma on WhatsApp of the non delivery of the email and Mr. Sharma suggested petitioner that he should try sending a copy of his passport from a different email address, which was done on the same day and was received by respondent no.1.

4 Despite corresponding back and forth with the department, petitioner was unable to get new password to access the ITBA portal. Thereafter, this petition came to be filed.

5 Mr. Suresh Kumar, relying upon affidavit in reply filed by one Santosh Kumar Jha ITO(IT) dated 21st July 2023, states that petitioner was required to upload requisite details through e-filing portal only and since petitioner had failed to follow the process, the impugned notices were issued and the order was passed.

6 Having considered the averments in the petition, documents and affidavit in reply, we are satisfied that petitioner deserves an opportunity to file his reply to the notices impugned in the petition.

7 In the circumstances, we hereby quash and set aside the impugned notices dated 11th February 2023 and 15th March 2023 issued under Section 148A(b) of the Act as well as the impugned order dated 31st March 2023 passed under Section 148A(d) of the Act and remand the matter for denovo consideration to the Jurisdictional Assessing Officer (JAO). Notice, if any, issued under Section 148 of the Act is also quashed and set aside.

8 Petitioner shall file a reply within two weeks of being informed about the opening of the portal. JAO shall pass an order after considering the reply filed by petitioner. The order to be passed shall be a reasoned order considering all submissions made by petitioner. If JAO is going to pass any order adverse to petitioner's interest, then petitioner shall be given a personal hearing through VC or appearing in person, notice whereof shall be communicated atleast five working days in advance.

9 Petition disposed.

10 We clarify that we have not made any observation on the merits of the matter.

(Dr. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**