2024:PHHC:118203-DB

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

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CWP-8959-2022 (O&M)
Decided on : 09.09.2024

Gurcharan Singh

. . . Petitioner(s)

Versus

Income Tax Officer, Ward-1(1), Bathinda

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

PRESENT: Mr. Prince Goyal, Advocate
for the petitioner(s).

Ms. Urvashi Dhugga, Sr. Standing Counsel
for the respondent(s).

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. Both the counsel are *ad idem* that the issue raised in the present writ petition stands duly adjudicated by the Coordinate Bench of this Court in ***CWP-8784-2022***, titled as, ***"Saroj Rani vs. Income Tax Officer, Ward 1, Bathinda"***, decided on ***20th February, 2023***. In that case, although the reply was filed, but the same had not been taken into consideration and the order under Section 148A(d) of the Income Tax Act, 1961 (for brevity, 'the Act') had been passed. This Court observed as under:-

> *" The above said provision makes it abundantly clear that it is the duty of the Assessing Officer to consider the reply filed by the assessee. In the present case, the reply was already received by the department as it is evident from the reply filed by the respondent. However, the only ground taken in not considering the reply is that on earlier date i.e. 28.03.2022 the order had been drafted and had been sent to the Principal Chief Commissioner for approval. However, as per*

noting (Annexure R-2), it is clear that on 28.03.2022 when the order was sent for approval it was sent back for some correction and on 29.03.2022, the Assessing Officer was already in possession of the reply.

Keeping in view the aforesaid judgment passed by the Delhi High Court, the instant petition is allowed and orders dated 31.03.2022 (Annexures P-4 and P-5) are being set aside and direction is given to the Assessing Officer to pass a fresh order after examining the reply dated 29.03.2022 filed by the petitioner (Annexure P-2) and pass a speaking order thereafter in accordance with law."

2. In the present case, as per the reply filed by the respondent – revenue, it is stated that the reply filed by the assessee on 24th March, 2022, did not appear in the account of this office and as per record, the incident bearing No.1748977 was raised by the Assessing Officer through ITBA Helpdesk Service on 23rd May, 2022, thereby, requesting to provide solution, as the reply of the assessee is not showing on ITBA system. The ITBA Helpdesk provided the solution as under:-

" *Dear user, assessee response has been inwarded from e-filing portal and available to download now from case history/notings screen. Kindly download 7-zip application in system to open files with .gz extension."*

3. Since the reply filed by the petitioner – assessee was not available, when order under Section 148-A(d) of the Act, was drafted on 29th March, 2022 and submitted to the higher authorities for approval and final order was passed on 31.03.2022, we are satisfied that the reply has not been considered, which is *sine qua non* for passing an order.

4. In view of above, we allow this writ petition and set-aside the

order dated 31.03.2022, passed by the respondent – revenue under Section 148-A(d) of the Act and direct the respondent – revenue to download the reply, which is already available in the ITBA Helpdesk (as quoted above) and after considering the said reply, they would be free to pass a fresh order. If such an order is passed, the petitioner – assessee would be free to assail the same, if aggrieved from it in any manner.

It is made clear that since the order was passed under Section 148-A(d) of the Act, coming in the new regime, the concerned Jurisdictional Assessing Officer, who would examine the same, as per the position existing on 31st March, 2022.

Petition stands disposed of.

Pending misc. application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

September 09, 2024
J.Ram

Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: Yes/~~No~~