30.06.2025
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Ct. No.7
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WPA 18239 of 2024

Mukul Mahanta
Vs.
The Union of India & Ors.

Mr. Himangshu Kumar Ray
Ms. Shiwani Shaw
Mr. Gourav Chakraborty
.....for the petitioner

Mr. Tilak Mitra
...... for the respondents

The present writ petition challenges the legality and validity of certain notices issued by the competent authority under Sections 142, 144, and 144B of the Income-tax Act, as well as the assessment order passed under Section 147 read with Sections 144 and 144B of the Income-tax Act.

Mr. Ray, learned advocate appearing on behalf of the petitioner, submits that no adequate opportunity was afforded to the petitioner to respond to the show cause notice, and as such, the assessment order has been passed in violation of the cardinal principles of natural justice. He further submits that the show cause notice was issued on 13th March, 2023, at around 20:02 hours, granting time to respond only until 18:00 hours on 17th March, 2023.

He draws the attention of this Court to the Standard Operating Procedure (SOP) formulated by the respondents, wherein it has been stipulated that a minimum period of seven days shall be afforded to the assessee to respond to a show cause notice from the date and time of its issuance. However, he contends that the concerned authority without strict adherence to the said SOP, granted the petitioner only four days to submit a response to the show cause.

Mr. Ray submits that a show cause notice which does not afford a minimum response time of seven days is legally unsustainable. In support of this contention, he relies upon a decision of a Co-ordinate Bench of this Court in *Sreelekha Banerjee vs. Deputy Commissioner of Income-tax & Ors.*, reported in (2024) 467 ITR 1 (Cal), as well as an unreported judgment of a Co-ordinate Bench of the Hon'ble High Court of Karnataka in *Writ Petition No. 12923 of 2023 (T-IT)* (*Shri Chowdapally Dattaprakash Ajay vs. Central Board of Direct Taxes & Ors.*).

According to him, as the show cause notice issued to the petitioner did not grant the mandatory response time of seven days, the petitioner has suffered serious prejudice and was effectively denied a fair and reasonable opportunity to submit a reply thereto

In rebuttal, Mr. Mitra, learned Advocate appearing for the respondents, draws my attention to the prayer portion of the writ petition and submits that the petitioner has challenged the legality of nearly all the notices issued by the respondent authorities, as well as the assessment order. He further submits that there exists a fundamental distinction between assessment and reassessment of the income-tax return filed by an assessee. He assiduously outlines the procedure ordinarily followed in cases of assessment and reassessment under the provisions of the Income-tax Act.

He submits that, in the present case, as there existed sufficient reason to believe that income chargeable to tax had escaped assessment, the respondent authority proposed a variation in the returned income and accordingly initiated proceedings to reassess the income-tax return filed by the petitioner.

He contends that the reassessment was carried out under Section 147 of the Income-tax Act. However, prior to initiating reassessment, the procedures prescribed under Section 148A and subsequently under Section 148 were duly followed. Drawing my attention to the relevant provisions of Section 144B of the Income-tax Act, he submits that where a variation is proposed, the assessee must be afforded an opportunity to submit a fresh return in accordance with Section 148A and thereafter under Section 148. He further submits that in the present case, the petitioner was duly called upon to file a return, but failed to do so.

He further submits that, prior to initiating any proceedings for reassessment under Section 147 of the Income-tax Act, the concerned authority conducted an enquiry in terms of Section 148A. Subsequently, the petitioner was afforded a reasonable opportunity by service of a show cause notice providing a minimum period of seven days to explain why a notice under Section 148 should not be issued, based on information indicating that income chargeable to tax had escaped assessment for the relevant assessment year.

He also submits that, in the present case, a notice under Section 148A(b) was duly issued to the petitioner, affording him an opportunity to submit his reply. However, the petitioner failed to furnish any response to the said show cause notice. Consequently, a decision was taken under Section 148A(d), and thereafter, a notice under Section 148 was issued. He further submits that notices under Section 142(1) were also served upon the petitioner on multiple occasions. The petitioner sought adjournments on some of those occasions. However, he ultimately failed to submit any reply to the said notices. In these circumstances, the concerned authority was ultimately compelled to proceed under Section 147 of the Income-tax Act, reassess the petitioner’s income, and pass a reasoned assessment order.

He submits that the Standard Operating Procedure (SOP) adopted by the department is intended merely to serve as a guiding framework for the Assessing Officer, and does not confer any enforceable right upon the assessee. Therefore, any alleged breach or non-compliance with the SOP, by itself, cannot render the assessment order invalid. In support of his submission, he refers to an unreported decision of the Hon'ble Division Bench of this Court, headed by the Hon'ble the Chief Justice, rendered in ITAT/241/2024 (*Principal Commissioner of Income Tax-9, Kolkata vs. P.L. Goenka HUF*).

Heard the learned advocates representing both the parties and perused the materials on record.

Undoubtedly, a Standard Operating Procedure (SOP) was adopted by the respondents, which contemplated the grant of a minimum response time of seven days from the date of issuance of a show cause notice. However, as observed earlier, the Hon'ble Division Bench, in its judgment in *Principal Commissioner of Income Tax-9, Kolkata (supra)*, held that such SOP does not constitute a statutory rule, regulation, or mandatory directive. Rather, it serves merely as a guiding tool intended to guide the Assessing Officer in forming satisfaction under Section 147 of the Income-tax Act. The Hon'ble Division Bench further observed that the learned Tribunal had erred by elevating the status of the Standard Operating Procedure (SOP), which is intended merely to guide the Assessing Officer, to be taken as a rule or regulation which would be binding on the assessee.

Therefore, a plain reading of the judgment makes it clear that the SOP cannot be construed as a rule or statute having the force of law; it is merely a set of guidelines framed for administrative purposes.

A useful reference may be made to the decision of the Hon'ble Supreme Court in *State of U.P. & Ors. vs. Sudhir Kumar Singh*, reported in (2021) 19 SCC 706, wherein it was held that the principles of natural justice are inherently flexible and cannot be applied through any rigid or straitjacket formula. Their application must be guided by the facts and circumstances of each case. The Hon'ble Supreme Court further observed that a mere technical breach of natural justice does not, by itself, vitiate an order. Rather, the validity of such an order must be assessed on the touchstone of 'prejudice.' The ultimate and determinative test is whether the person concerned has suffered actual prejudice or has been denied a fair hearing. Consequently, a bald plea of violation of natural justice is insufficient unless the person asserting it is able to demonstrate that he has, in fact, suffered prejudice as a result. In the absence of such prejudice, no interference with the order is warranted.

In the present case, as noted earlier, notices under Sections 148, 148A(b), and 142(1) of the Income-tax Act were duly issued to the petitioner. The petitioner received all such notices but failed to submit any reply thereto, despite having sought and obtained adjournments on multiple occasions in relation to the show cause notice issued under Section 142(1) of the Act.

In such circumstances, there is no material on record to support the contention that the petitioner suffered prejudice merely because a response time of only four days was granted instead of seven days, as suggested in the Standard Operating Procedure. On the contrary, it appears that the petitioner had sufficient opportunity to respond and avail the remedies available under law to challenge the reassessment order, but failed to do so.

Therefore, in view of the discussions and reasons set forth in the preceding paragraphs, and upon applying the principles laid down in *P.L. Goenka HUF* (supra), I am of the considered opinion that no prejudice has been caused to the petitioner. Accordingly, no interference is warranted in the present writ petition.

However, it is clarified that the reassessment order passed by the authority under Section 147 of the Income-tax Act is an appealable order, and the petitioner shall be at liberty to challenge the same before the appropriate forum in accordance with law.

Accordingly, the writ petition is dismissed.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)