



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 6852/2022

Bijendra Singh S/o Pohap Singh, Ondela Road, Durga Colony,
Dholpur, Rajasthan.

----Petitioner

Versus

1. Principal Chief Commissioner of Income Tax, Jaipur,
Income- Tax Department, NCR Building, Statue Circle,
Jaipur.
2. Income Tax Officer, Ward-I, Income Tax Department,
Goverdhan Gate, Near Head Post Office, Bharatpur.

----Respondents

For Petitioner(s) : Mr. Priyesh Kasliwal & Mr. Rahul Pandya.
For Respondent(s) : Mr. Anuroop Singhi with Mr. N.S. Bhati
and Mr. Aditya Khandelwal.

**HON'BLE MR. JUSTICE ARUN BHANSALI
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

Order

Reportable

04/01/2024

1. This writ petition has been filed by the petitioner, aggrieved of pre-reassessment notice dated 16.03.2022 (Annex.1) issued under Section 148A (b) of the Income Tax Act, 1961 ('the Act'), the order dated 27.03.2022 (Annex.4) passed under Section 148A (d) of the Act and the notice dated 27.03.2022 (Annex.5) issued under Section 148 of the Act.

2. It is, *inter-alia*, indicated that the petitioner was issued notice (Annex.1) dated 16.03.2022 under Section 148A (b) of the Act calling upon him to file his response by 23.03.2022, which notice is contrary to the requirement of provisions of Section 148A (b) of the Act, which requires a notice of not less than seven days.



Submissions have been made that the days 16.03.2022 and 23.03.2022 have to be excluded, and as the time left is less than seven days, notice issued is bad.

3. Further submissions have been made that the notice issued is barred by limitation, as provided under Section 149(1)(a) of the Act, inasmuch as the amount involved is less than Rs.50,00,000/- and for the Assessment Year 2015-16, these notices have been issued after lapse of three years and as such the notice being without jurisdiction, deserves to be quashed and set aside.

4. Submissions have also been made that from the material produced by the respondents, it is apparent that the notice, which was issued to the petitioner, was not served on the petitioner and was received back by the Department on 28.03.2022, however, the order under Section 148A(d) of the Act was passed on 27.03.2022 itself, which clearly indicates the manner in which the respondents have proceeded and, therefore, the entire proceedings initiated by the respondents, deserve to be quashed and set aside.

5. Learned counsel appearing for the Department made submissions that as the petitioner didn't file any response to the notice, the respondents were constrained to pass the order impugned. Further submissions have been made that insofar as the challenge laid to the jurisdiction in terms of Section 149(1)(a) of the Act is concerned, the said aspect could only be determined by the authority concerned and merely on account of the indications made by the petitioner, the said plea cannot be accepted.



6. However, it was fairly submitted that the notice as issued, does not comply with the requirement of Section 148A(b) of the Act, insofar as time granted for responding is concerned. It was prayed that the matter may be remanded back to the authority to provide opportunity to the petitioner as per law and thereafter pass a fresh order.

7. We have considered the submissions made by counsel for the parties and have perused the material available on record.

8. The notice under Section 148A(b) of the Act was issued to the petitioner pertaining to Assessment Year 2015-16, with the allegations that the petitioner has deposited in cash amount of Rs.42,15,000/- in his saving bank account with Bank of Baroda and again it has been indicated that he has deposited cash aggregate Rs.41,65,000/- in the bank account maintained with Bank of Baroda. The notice also invoked the provisions of Section 149(1)(b) along with explanation, which provides extended period of limitation up to ten years, in case where the amount involved is more than Rs.50,00,000/-.

9. The notice is dated 16.03.2022 and the petitioner has been called upon to file his response on or before 23.03.2022. It appears that the notice was never served on the petitioner, as in reply to the petition, the respondents have produced the envelope, by which the notice was sent to the petitioner and was returned back 'undelivered' to the respondent Department, wherein the same has been received in the office on 28.03.2022. The postal receipt pertaining to sending of the notice indicates the date of 17.03.2022.



10. Section 148A(b) of the Act requires providing opportunity of being heard to the assessee by serving upon him/her notice to show cause within such time, as may be specified in the notice being 'not less than seven days' but not exceeding thirty days from the date, on which such notice is issued.

11. The aspect of calculating the days in a case where the provision requires a notice of 'not less than particular days', has been dealt with by the Hon'ble Supreme Court in *the Pioneer Motors (Private) Ltd. vs. The Municipal Council, Nagrecoil* : AIR 1967 SC 684, wherein it has, *inter-alia*, been laid down as under:

"The words "not being less than one month" do imply that clear one month's notice was necessary to be given, that is, both the first day and the last day of the month had to be excluded. To put it in the language used by Maxwell on Interpretation of Statutes, 10th Edition, p. 351 :-

"..when..... 'not less than' so many days are to intervene, both the terminal days are excluded from the computation."

12. It has been laid down by the Hon'ble Supreme Court that both the terminal days have to be excluded for the purpose of complying with the requirement of words 'not less than days ". Admittedly, in the present case, the notice dated 16.03.2022 was issued/posted on 17.03.2022 and the date fixed for response was 23.03.2022. Excluding two days i.e. the date of sending of the notice as well the last date indicated, even if the notice was received by the petitioner, the same falls short of seven days' period, as envisaged by provisions of Section 148A(b) of the Act; and as such, for violation of mandatory provisions of Section 148A(b) of the Act, the notice issued to the petitioner cannot be sustained.



13. So far as the plea pertaining to Section 149(1)(a) of the Act pertaining to limitation is concerned, as noticed hereinbefore, the notice pertained to bank account of the petitioner in Bank of Baroda. The petitioner has placed on record Annex.2, which is statement of account of the petitioner for the period 01.04.2014 to 31.03.2015, which pertain to the Assessment Year 2015-16. The said statement of account contains three cash entries of deposit i.e. Rs.2,65,000/-, Rs.50,000/- and Rs.39,00,000/- on three different dates, the total of which, comes to Rs.42,15,000/-. The notice indicates the said amount of Rs.42,15,000/-, however, another indication has been made of deposit of sum of Rs.41,65,000/- in the said notice. In the order passed under Section 148A(d) of the Act, the Assessing Authority has merely reiterated the said amount of Rs.42,15,000/- and 41,65,000/-, nothing has been indicated to further substantiate the said amount having been deposited by the petitioner. In response to the writ petition also, the statement of account (Annex.2) has not been disputed by the respondents and/or the case has been made out seeking to indicate that the petitioner has any other bank account other than what has been produced by the petitioner as Annex.2. The Annex.2, as noticed hereinbefore, indicates the amount of Rs.42,15,000/- only, which is clearly less than Rs.50,00,000/-.

14. Section 149(1)(a) of the Act provides that no notice under Section 148 of the Act shall be issued for the relevant assessment year, if three years have elapsed from end of the relevant assessment year. The exception to the said provision has been provided under Clause (b), wherein a notice can be issued up to



ten years, where the escaped assessment amount is Rs.50,00,000/- or more.

15. As in the present case, the amount is less than Rs.50,00,000/- and for the Assessment Year 2015-16, the notice has been issued on 16.03.2022 i.e. beyond three years, the same is ex-facie barred by limitation and consequently is without jurisdiction.

16. The mechanical exercise of powers by the respondents is also reflected from the fact that though the notice sent to the petitioner was returned back and received in the office on 28.03.2022, the authority without caring for the fact as to whether the notice sent to the petitioner has been served, or not, has passed the order under Section 148A(d) of the Act on 27.03.2022, which mechanical exercise of power under the Act, cannot be appreciated under any circumstance.

17. In view of above discussion, the writ petition filed by the petitioner is allowed. The notice dated 16.03.2022 (Annex.1) issued under Section 148A(b) of the Act, the order dated 27.03.2022 (Annex.4) passed under Section 148A(d) of the Act and the notice dated 27.03.2022 (Annex.5) issued under Section 148 of the Act are quashed and set aside.

(ASHUTOSH KUMAR),J

(ARUN BHANSALI),J

54-DJ/-

