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WP-16139-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 4th OF NOVEMBER, 2024WRIT PETITION No. 16139 of 2024*RAKESH AGRAWAL**Versus**CENTRAL BOARD OF DIRECT TAXES AND OTHERS*

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Appearance:

Shri Gagan Tiwari - Advocate for the petitioner.

Shri Harsh Parashar on behalf of Veena Mandlik - Advocate for the respondents.

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ORDER

Per. Justice Vivek Rusia

The present writ petition under Article 226 of the Constitution of India has been filed challenging the order dated 05.04.2024 passed under Section 148A(d) of the Income Tax Act, 1961 and the re-assessment notice dated 05.04.2024 issued under Section 148 of the Act.

2. The brief facts of the case are that the petitioner is an individual holding PAN No. ABYPA6388C has income tax payee under the Income Tax Act, 1961. The petitioner was served with the show-cause notice dated 24.03.2024 under Section 148A(b) of the Act for the Assessment Year 2020-21 calling upon him to furnish the details and supporting documents with respect to the queries. The petitioner was called upon to appear on



31.03.2024. The petitioner appeared and submitted an application seeking 15 days time to prepare a reply and collect the necessary documents. The respondent passed the final order dated 05.04.2024 under Section 148A(d) and in consequence of it, the respondent No.3 has issued a show-cause notice under Section 148 of the Act on 05.04.2024 itself. Hence, the petitioner has approached this Court.

3. Learned counsel for the petitioner submits that the petitioner had sufficient time to file a reply within 30 days. He appeared only once on 31.03.2024 and sought 15 days time to file reply. The reply was filed on 05.04.2024 but without considering the same, the impugned order has been passed. The provisions of Section 148A(b) of the Income Tax Act has not been followed as the petitioner was not been given effective opportunity of hearing, therefore, the impugned order is bad in law and liable to be set aside.

4. Shri Harsh Parashar, learned counsel standing appearing on behalf of respondents upon instructions submits that the petitioner is having a remedy to appear before the competent authority to contest the proceedings initiated under Section 148 of the Income Tax Act. Thereafter, he will have a remedy to file an appeal before the Appellate Authority. Learned counsel for the respondent has placed reliance on an order passed by the Coordinate Bench in the matter of *Laxminarayan Patidar Vs. Income Tax Officer and Another* passed in *W.P. No. 13065 of 2022* , whereby the writ petition has been dismissed at the admission stage itself with liberty to the petitioner to avail the statutory alternative remedy under the Income Tax Act.



Heard learned counsel for the parties and perused the record.

5. It is not in dispute that the petitioner was served with the show cause notice dated 24.03.2024 with a date to appear on 31.03.2024. The petitioner appeared on 31.03.2024 and sought adjournment to file a detailed reply, but the respondent has wrongly observed that the petitioner has filed a reply on 31.03.2024. In fact the petitioner filed a reply on 05.04.2024, a copy of which is available at Page No.32 of this writ petition. On the very same date, the competent authority has passed the final order treating that the reply is filed on 31.03.2024. We are of the considered opinion that the petitioner was not given an effective opportunity of hearing to defend himself.

6. Admittedly, order passed under Section 148A(d) of the Income Tax Act is not an appealable order, therefore, except writ petition the petitioner has no other alternative efficacious remedy. Once the statute provides an opportunity of hearing before initiation of proceedings under Section 148 of the Act, then effective opportunity of hearing should be provided to the assessee. It is not the case where the time to pass final order was going to expire and the order was liable to be passed on 05.04.2024. As per Section 148A(b) of the Income Tax Act, minimum 7 days time and maximum 30 days time is liable to be given as an opportunity of hearing to the noticee. In the present case, the impugned order has been passed before expiry of 30 days from the date of issuance of show cause notice, therefore, the order is unsustainable the eyes of law.

7. In view of the the above, the impugned order dated 05.04.2024 is hereby set aside without entering into the merits of the case. The matter is



remitted back to the respondents to decide the show cause notice issued under Section 148A(d) of Income Tax Act afresh after giving opportunity of hearing to the petitioner.

8. With the aforesaid observations, the writ petition stands disposed off.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

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