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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6066/2022 & CM APPL. 18211/2022 (for interim relief)

DIVIJ SINGH KADAN Petitioner
Through: Mr. Piyush Kaushik, Advocate.

versus

PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
DELHI & ANR. Respondents
Through: Mr. Ajit Sharma, Senior Standing
Counsel for Revenue.

Date of Decision: 27th May, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the order dated 31st March, 2022 issued under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') as well as Notice dated 31st March, 2022 issued under Section 148 of the Act for the assessment year 2015-16. Notice was issued in this matter and the Respondents-Revenue (hereinafter referred to as 'Respondents') have filed their reply-affidavit and the Petitioner-Assessee (hereinafter referred to as 'Petitioner') has filed his rejoinder.

2. Learned counsel for the petitioner states that the impugned order has

been passed in violation of the principles of natural justice as it has been passed without providing adequate opportunity to the petitioner in contravention of the provisions of Section 148A of the Act to file a reply to the notice dated 17th March, 2022 issued under Section 148A(b) of the Act. He submits that the said notice sent by speed post through ED853116135IN was received by speed-post on 24th March, 2022 at the Delhi Address of petitioner. He however, submits that it is an admitted position that the petitioner is not a resident Indian and is employed in the United States of America. It is further submitted that both his parents were also with him in the United States of America during this relevant period and his address in Delhi was being looked-after by the domestic staff.

3. He further states that as per the notice dated 17th March, 2022 issued under Section 148A(b) of the Act, the Assessing Officer had granted eight (8) days time to the petitioner for submitting the reply. He submits that in view of the non-availability of the petitioner in India, the time granted for eight (8) days was insufficient and therefore, an e-mail was issued by the petitioner on 27th March, 2022 to the respondent seeking extension of time for furnishing a response to the said notice. In the said e-mail, the factum of the petitioner not being present in India was duly mentioned.

4. He states that as is evident from the ITBA e-portal, the e-portal had been closed by the Assessing Officer for any reply on 26th March, 2022. He submits that this closure on 26th March, 2022 is illegal since, the eight (8) days for filing the reply when reckoned from 24th March, 2022 would expire on 1st April, 2022.

5. He submits that it is now a matter of record that the notice under Section 148A(b) was admittedly not sent by e-mail to the petitioner despite

the petitioner being successfully registered for the purpose of e-filing on the ITBA portal. The e-mail address of the petitioner is admittedly available with the Assessing Officer and the petitioner has along with his rejoinder annexed the documents evidencing the use of the said e-mail by the department for communicating with the petitioner for the past assessment years.

6. He relies upon the judgment of this Court in the case of ***W.P. (C) No. 7406/2022 in Divya Capital One Private Limited (Earlier Known As Divya Portfolio Private Limited) vs. Assistant Commissioner of Income Tax Circle 7(1) Delhi & Anr. passed on 27th May 2022*** wherein this Court has held that if a request for extension of time is made by the Assessee, the Assessing Officer should duly consider such request keeping in mind the fact that the provision enables the Assessing Officer to grant a period of upto 30 (thirty) days for obtaining a reply.

7. The petitioner has filed on record the print-out of the petitioner's profile as sent on the e-portal which duly records the status of the petitioner as a 'non resident'. He submits that the reply-affidavit filed by the respondent alleging that the service of notice dated 17th March, 2022 was also affected by post on 21st March, 2022 is not admitted. He submits that in view of the fact that neither the petitioner nor his parents were in Delhi at the relevant time, the petitioner is unable to confirm the fact about the alleged receipt of notice on 21st March, 2022. He further contends that without prejudice to his rights and contentions, assuming that the notice was served on 21st March, 2022, even on that count, the e-portal could not have been closed by the Assessing Officer before 29th March, 2022 i.e. eight days from the service of notice. He submits that the impugned order under

Section 148 (d) of the Act though passed on 31st March 2022 fails to take note of the request for extension of time sent by e-mail on 27th March 2022. He therefore, submits that since there has been gross violation of principles of natural justice, the impugned order may be set aside.

8. The respondent has filed a reply-affidavit and has raised an objection to the maintainability of the petition on the ground that the petitioner herein has withheld the fact as regards the receipt of notice dated 17th March, 2022 on 21st March, 2022 sent by speed post bearing no. ED906740645IN.

9. He admits that the notice under Section 148A (b) of the Act was not served by e-mail upon the petitioner. He further submits that the e-mail dated 27th March, 2022 issued by the petitioner seeking extension of time to file reply though received on the official e-mail address of the Assessing Officer; the said e-mail was not accessed by the Assessing Officer before passing the impugned order and issuing the impugned notice both dated 31.03.2022. He submits that as a matter of practice, the Assessing Officer only reviews the material uploaded by the assessee on the e-portal for the purpose of passing orders under Section 148A(d) of the Act and he does not review his emails for the said purpose. Learned counsel for the respondent has not disputed that the e-portal had been closed on 26th March, 2022.

10. We have heard learned counsel for the parties. The submission of the respondent that the petitioner was served with the notice dated 17th March, 2022 on 21st March, 2022 and not on 24th march, 2022 as stated in the petition is of no consequence, since, the period of eight (8) days, if reckoned from the date of 21st March, 2022 would expire on 29th March, 2022. Therefore, even on respondent's showing the e-portal could not have been closed on 26th March, 2022.

11. It is also noticed that while in its reply-affidavit, though the respondent places heavy reliance upon the service of notice on 21st March, 2022 through speed post bearing no. ED906740645IN, however, the order passed under Section 148A(d) of the Act refers to the service of notice effected on 24th March, 2022 through speed post bearing no. ED853116135IN. The said order makes no reference to the other speed post receipt. Therefore, the Assessing Officer himself relied upon service of notice issued to the petitioner by speed post *vide* Consignment No. ED853116135IN, which is admittedly received by the petitioner on 24th March, 2022 and therefore the Respondent cannot contend to the contrary in the present proceedings.

12. Learned counsel for the respondent has not disputed that the petitioner is a 'non resident' and was stationed in the United States of America, when the notice was issued and received at the Delhi address. The status of the petitioner being non-resident is also duly reflected in the profile of the petitioner registered with the respondent. The notice pertains to assessment year 2015-16, and therefore accessing and collating the records for same may require reasonable time for an assessee residing abroad. In these circumstances a request for extension of time to file reply should have been considered by the Assessing Officer for granting a reasonable extension. The submission of the respondent that the Assessing Officer does not review his e-mails and therefore, the request for extension dated 27.03.2022 made through e-mail is not a valid request cannot be accepted. The communication between the Assessee and the Assessing Officer through e-mails is an established procedure and is evident from the documents annexed by the petitioner with the rejoinder, it is a valid means of

communication used by the Assessing officer to communicate with the Petitioner.

13. The Respondent itself issues notices under Section 148A (b) to the assessee through emails and therefore a submission that if a reply or request is sent to the assessing officer on his official email address, he is not obliged to consider such email cannot be accepted.

14. This court in ***W.P. (C) No. 7406/2022 in Divya Capital One Private Limited (Earlier Known As Divya Portfolio Private Limited) vs. Assistant Commissioner of Income Tax Circle 7(1) Delhi & Anr.*** has held as under :-

“This Court is also of the view that the petitioner-assessee has a right to get adequate time in accordance with the Act to submit its reply. In the present case, the impugned order under Section 148A(d) of the Act has been passed in great haste and in gross violation of principle of natural justice as the Petitioner was not given reasonable time to file a reply.”

15. The ratio of the aforesaid judgement covers the facts of this case and consequently, the impugned order dated 31st March, 2022 issued under Section 148A(d) of the Act as well as the Notice dated 31st March, 2022 issued under Section 148 of the Act for the assessment year 2015-16 are hereby quashed and the matter is remanded back to the Assessing Officer for a fresh determination. The petitioner is granted by way of a final opportunity two weeks' time to file his response to the Notice under Section 148A(b) of the Act. The Assessing Officer is directed to pass a fresh reasoned order under Section 148A(d) of the Act after considering the petitioner's reply in accordance with law within eight weeks thereafter. In the event, the

Assessing Officer wants clarification or would like the petitioner's response to any specific information received by the Revenue, it shall be open to give a supplementary notice. The Respondent is directed to open the e-portal for a period of two weeks to enable the petitioner to upload his reply. It is made clear that no further extension of time would be afforded to the petitioner for filing its reply.

This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open.

With the aforesaid direction, the present writ petition along with pending applications stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 27, 2022

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