IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 2186 of 2022

Jindal Forgings ..… Petitioner

Versus

1. Income Tax Department through Principal Commissioner of Income-Tax, Jamshedpur.
2. Principal Commissioner of Income-tax, Ranchi.
3. Income-tax Officer, Ward 2(1), Jamshedpur. ..... Respondents

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CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. Kumar Vaibhav, Adv.

For the Respondents : Mr. Rahul Lamba, Adv.

6/11.7.2022

Per Deepak Roshan, J. The instant application has been preferred by the petitioner praying therein for quashing of the order as contained in letter dated 31.3.2022 (Annexure-3) passed under Section 148A (d) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') whereby it has been ordered that the case of the assessee is a fit case for issuance of notice under Section 148 of the Act for the Assessment Year 2018-19. The petitioner has further prayed for quashing of the entire reassessment proceeding for the Assessment Year 2018-19 including the notice under Section 148A(b) of the Act dated 25.3.2022 (Annexure-2) and also notice under Section 148 of the Act dated 31.3.2022 (Annexure-4).

2. The facts of the case lie in a narrow compass. The petitioner had filed its return of income for the Assessment Year 2018-19, on 25.09.2018. The books of the petitioner were duly audited as per Section 44AB of the Act. On 25.3.2022, a notice under clause (b) of Section 148A of the Act was issued to the petitioner calling upon the petitioner to show- cause as to why notice under Section 148 of the Act be not issued for the reasons stated in annexure to the notice dated 25.3.2022. In this notice the petitioner was directed to ensure compliance on or before 28.3.2022. Even before lapse of seven days' time from 25.03.2022, on 31.03.2022 itself the Assessing Officer passed an order under Section 148A(d) of the Act whereby *inter-alia* it has been ordered that the case of the Assessee is a fit case for issuance of notice under Section 148 of the Act for the Assessment Year 2018-19 and on 31.3.2022 itself notice has been issued.

3. Mr. Kumar Vaibhav, learned counsel for the petitioner submits that the Assessing Officer has erred in law and has acted in contravention of section 148A of the Act. The Assessing Officer has totally ignored the timelines prescribed by the Statute, which is in complete violation of the letter and spirit of the new regime for reassessment proceeding introduced by the Finance Act, 2021. Section 148A(b) lays down that the Assessee is to be afforded an opportunity to show cause within such time as specified 'being not less than seven days'.

Learned counsel further submits that serious and grave prejudice has been caused to the petitioner as the petitioner has been denuded of an opportunity to file its show cause reply in order to persuade the revenue that there is no escapement of income for the concerned Assessment Year. He further submits that the petitioner apprehends that now the revenue will proceed with the reassessment proceedings. Since the very inception the genesis of the reassessment proceeding is violative of Section 148A of the Act, the entire subsequent actions of the Revenue in the instant matter is fit to be rendered illegal and *void-ab-initio* as there is clear violation of the mandatory timeline as stipulated in Section 148A(b) of the Act which has also caused great prejudice to the petitioner. As such, the instant writ petition may be allowed and the impugned order passed under Section 148A(d) dated 31.3.2022, the notice under Section 148A(b) dated 25.3.2022 and the Notice issued under Section 148 dated 31.3.2022 for the Assessment Year 2018-19 be quashed and set aside.

4. Mr. Rahul Lamba, learned counsel appearing for the respondent-Income Tax Department submits that the main issue involved in the instant writ petition is with regard to the time limit provided to the petitioner for filing reply against the show cause notice issued under Section 148A (b) of the Act. He further submits that the contention of petitioner that the respondent No.3 has not provided the petitioner the time period of seven days from the issue of the said notice under Section 148A(b) for replying to the said notice and instead passed the order under Section 148A (d) and consequential notice under Section 148 were issued by the respondent No.3 which has prejudiced the petitioner is not correct. As a matter of fact, notice to show cause under Section 148A (b) of the Act was issued by the respondent No.3 on 25.3.2022, though initially the time period for replying to the said notice was till 28.3.2022 but the respondent no.3 waited till 31.3.2022 for any reply from the petitioner to the said notice. However, finally, when the respondent No.3 did not receive any reply from the petitioner to the said show cause notice dated 25.3.2022 nor did the respondent no.3 receive any request for extension of time limit to file its reply to the said show cause notice, the respondent no.3 based on the materials available on record issued an order under Section 148A(d) of the Act on 31.3.2022.

Mr. Lamba further submits that the respondent no.3 under the bonafide belief and impression that since no reply to the show cause notice nor request for extension of time limit has been received, has issued the order under Section 148A(d) of the Act on the last date of the Financial Year 2021-22 i.e. on 31.3.2022. He lastly submits that the respondent No.3 only on the basis of aforesaid reason, acted diligently and issued order under Section 148A(d) of the Act as well as issued notice under Section 148 of the Act on 31.3.2022.

5. Having heard learned counsel for the parties and after going through the documents available on record especially the notice under Clause (b) of Section 148A of the Act (Annexure-2) dated 25.3.2022 and the averments made in the respective affidavits, it clearly transpires that the concerned respondent has given only three days time to this petitioner to submit its response with supporting documents on the issue raised in the said notice. At this stage, it is relevant to refer Section 148A(b) of the Act which prescribes the time period which shall be granted to the assessee to file its reply. The same is quoted herein below:-

> *"148A(b) Provide an opportunity of being heard to the assesse, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issue, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 should not be issued on the basis of information which suggest that income chargeable to tax has escaped assessment in his case for the relevant assessment year and result of enquiry conducted, if any, as per clause (a);"*

After going through the aforesaid provision it is ample clear that a minimum time of seven days has to be granted to the assessee to file its reply to the show cause notice issued u/s 148 A(b) of the Act. The contention of the Revenue that though only three days time was given to the petitioner to file its reply but the order has been passed on seventh day as the Assessee did not file any reply, is not acceptable as the legislature has categorically stipulated mandatory timeline of minimum 'Seven days' and maximum 'Thirty days' to be given to the petitioner before the order u/s 148A(d) can be passed for reassessment proceeding. In the case at hand admittedly, the same has not been followed; as such the instant writ application is maintainable under the writ jurisdiction.

At this stage, it is pertinent to mention here that since the defect committed by the Revenue by giving less than seven days' time to the Assessee to reply to the Notice issued u/s 148(A)b of the Act, is a curable defect; as such, the Revenue, if the law so permits, can issue fresh letter to the Assessee in continuation to the Notice issued u/s148(A)b of the Act by giving him at least seven days' time and not more than thirty days to file its show-cause reply and proceed in the matter.

6. Consequently, the impugned order dated 31.3.2022 issued under Clause (d) of Section 148A of the Act (Annexure-3), impugned Notice issued under Section 148 dated 31.3.2022 (Annexure-4) for opening the reassessment proceeding for the Assessment Year 2018-19, is hereby, quashed and set aside.

7. Accordingly, the instant writ application stands allowed and disposed of in the line of directions stipulated herein above.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

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