

(2022) 05 DEL CK 0330

In the Delhi High Court

Case No : Civil Writ Petition No. 7625 Of 2022, Civil Miscellaneous No. 23428-23429 Of 2022

Hardev Singh

APPELLANT

Vs

Income Tax Officer Ward 62(1), Delhi

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Income Tax Act, 1961 — Section 148, 148A, 148A(b), 148A(c), 148A(d)

Citation : (2022) 05 DEL CK 0330

Hon'ble Judges : Manmohan, J; Manmeet Pritam Singh Arora, J

Bench : Division Bench

Advocate : Nitin Gulati, Sanjay Kumar, Easha Kadian

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ petition has been filed challenging the order dated 29th March, 2022 passed by the Respondent under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and proceedings initiated pursuant thereto, including the impugned notice dated 04th April, 2022 issued by the Respondent under Section 148 of the Act. Petitioner also seeks a direction restraining the Respondents from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said purported order under section 148A(d) of the Act and notice under Section 148 of the Act and/or in any proceedings initiated thereunder for the Assessment Year 2018-19.

2. Learned counsel for the Petitioner states that Respondent issued a show cause notice dated 16th March, 2022 under Section 148A(b) of the Act alleging that the Petitioner/Assessee had invested a large amount of capital of Rs.85,85,500/- during the year under consideration. He states that the Petitioner was asked to file a reply on or before 21st March, 2022, without giving the minimum time of seven days as stipulated in Section 148A of the Act.

3. Learned counsel for the Petitioner further states that though the Petitioner filed his reply dated 24th March, 2022, yet the impugned order dated 29th March, 2022 was passed merely reiterating the information mentioned in the show cause notice dated 16th March, 2022 without considering the detailed reply of the Petitioner. He states that the Petitioner had adequately demonstrated in its reply that the alleged investment had been secured through proper channels.

4. Issue notice. Mr.Sanjay Kumar, learned standing counsel accepts notice on behalf of the Respondent/Revenue. He states that in the present case, income has escaped assessment. In support of his contention, he relies upon the order dated 29th March, 2022 passed by the Income Tax Officer under Section 148A(d) of the Act, wherein it has been held that income of Rs.85,85,500/-had not been included in the Petitioner's ITR for the Assessment Year 2018-19.

5. Having perused the paper book, this Court is of the view that 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.

6. In any event, as the impugned order under Section 148A(d) of the Act had been passed on 29th March, 2022 i.e. after receipt of the detailed reply by the Petitioner dated 24th March, 2022, the Assessing Officer should have considered the same as it was available on record. By not considering the reply of the Petitioner dated 24th March, 2022, the mandate of Section 148A(c) has been violated as it casts a duty on the Assessing Officer, by using the expression 'shall', to consider the reply of the Petitioner/assessee in response to notice under Section 148A(b) before making an order under Section 148A(d) of the Act. This Court in Fena Pvt. Ltd. vs. ACIT Circle 7-1 & Anr. in W.P.(C) 6553/2022 had quashed the order passed under Section 148A(d) of the Act in similar circumstances i.e. where the Assessing Officer had not taken into consideration the reply along with the documents/evidences filed by the assessee before passing the order under Section 148A(d).

7. Consequently, the impugned order under Section 148A(d) of the Act and impugned notice under Section 148 of the Act are quashed and the matter is remanded back to the Assessing Officer with a direction to decide the notice under Section 148A(b) of the Act by passing a reasoned order in accordance with law, after taking into account the reply filed by the Petitioner/Assessee. With the aforesaid directions, present writ petition along with pending applications stand disposed of.