

A.F.R.

Court No. - 3

Case :- WRIT TAX No. - 997 of 2022

Petitioner :- Nabco Products Private Limited

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Abhinav Mehrotra, Satya Vrata Mehrotra

Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard Sri Abhinav Mehrotra, learned counsel for the petitioner, Sri Sudarshan Singh, learned counsel for the respondent no.1 and Sri Gaurav Mahajan, learned Senior Standing Counsel for the respondent nos. 2 & 3.

2. This writ petition has been filed praying for the following reliefs :

*“a) To issue a writ, order or direction in the nature of CERTIORARI quashing the IMPUGNED ORDER Dt. 30.03.2022 passed u/s 148A(d) of the Income Tax Act, 1961 by the Respondent No. 2;
b) To issue a writ, order or direction in the nature of CERTIORARI quashing the IMPUGNED ORDER Dt. 06.06.2022 passed u/s 154 of the Income Tax Act, 1961 by the Respondent No. 2;
c) To issue a writ, order or direction in the nature of CERTIORARI quashing the IMPUGNED Notice Dt. 30.03.2022 u/s 148 of the Income Tax Act, 1961 by the Respondent No. 2.”*

3. On 26.07.2022 and 02.08.2022, this Court passed the following orders :

“26.07.2022

Heard Sri Abhinav Mehrotra, learned counsel for the petitioner, Sri Sudarshan Singh, learned counsel for the respondent No.1 and Sri Gaurav Mahajan, learned Senior Standing Counsel for the respondent Nos.2 and 3.

This writ petition has been filed praying for the following relief:

*"a) To issue a writ, order or direction in the nature of CERTIORARI quashing the IMPUGNED ORDER Dt. 30.03.2022 passed u/s 148A(d) of the Income Tax Act, 1961 by the Respondent No.2;
b) To issue a writ, order or direction in the nature of CERTIORARI quashing the IMPUGNED ORDER Dt. 06.06.2022 passed u/s 154 of the Income Tax Act, 1961 by the Respondent No.2;
c) To issue a writ, order or direction in the nature of CERTIORARI quashing the IMPUGNED Notice Dt. 30.03.2022 u/s 148 of the Income Tax Act, 1961 by the Respondent No.2;"*

Prima facie, from perusal of Annexure-3 to the writ petition, it appears that the petitioner has submitted a reply to the notice under clause (b) of Section of Section 148A of the Act, 1961 dated 22.03.2022. The reply was submitted on 29.03.2022. However, the impugned order under Section 148A(d) has been passed on the ground that no reply has been submitted. The application for rectification of the mistake submitted by the petitioner under Section 154 of the Act, 1961 has been rejected on the ground that no reply was received.

The petitioner has filed a copy of screen-shot of uploading his reply dated 29.03.2022, which appears at page 25 of the writ petition. Thus, the impugned order passed by the respondents, prima facie appears to be erroneous.

Sri Gaurav Mahajan, learned counsel for the respondent Nos.2 and 3 prays for and is granted a week's time to file short counter affidavit in which the respondents shall specifically state as to whether petitioner has submitted reply dated 29.03.2022 and whether it is available on the portal.

Put up as a fresh case before the appropriate bench on 02.08.2022. As an interim measure, it is provided that the impugned notice under Section 148 and the impugned order under Section 148A(d) of the Act, 1961, shall be kept in abeyance till the next fixed.

02.08.2022

Heard Shri Abhinav Mehrotra, learned counsel for the petitioner and Shri Gaurav Mahajan, learned Senior Standing Counsel for the respondent nos.2 and 3.

An order under Section 148-A(d) of the Income Tax Act, 1961 has been passed by the respondent no.2, prima facie, without consideration to the reply dated 29.03.2022 filed by the petitioner and the assessee's application under Section 154 of the Act, 1961 has also been rejected in the same manner.

Despite order of the Court dated 26.07.2022, the respondent nos. 2 and 3 are not filing even short counter affidavit.

Therefore, we direct the respondent nos.2 and 3 to file short counter affidavit by tomorrow, failing which both the respondents shall remain personally present before this Court on 03.08.2022 and shall show cause.

Put up as a fresh case before the appropriate Bench tomorrow, i.e., on 03.08.2022 at 10:00 a.m.”

4. Today, a short counter affidavit on behalf of the respondent nos. 2 & 3, dated 03.08.2022 has been filed. **In paragraph nos. 4, 5 and 6 of the aforesaid short counter affidavit, the respondent nos. 2 and 3 have stated as under :**

"4. That at the same time the answering respondents are not in a position to / cannot deny the system generated e-proceedings response Acknowledgment dated 29.03.2022 issued to the petitioner vide Acknowledgement No. 469506221290322 by which the petitioner

submits that it had e-filed its reply dated 29.03.2022 as has been annexed alongwith the Writ Petition.

5. That since the reply dated 29.03.2022 of the petitioner was not reflecting in the case history/notings maintained digitally on the ITBA Portal of PAN AAFC A8426N of the petitioner assessee as accessed by the Respondent No. 2 on the date of passing of the order as such the Respondent No. 2, under the circumstances, had passed the order dated 30.03.2022 issued under Clause (d) of Section 148-A of the Act and the Rectification Application filed u/s 154 of the Act was also decided under the same circumstances.

6. That under the circumstances as enumerated in the preceding paragraphs the answering respondents most respectfully admit that the orders dated 30.03.2022 and 06.06.2022 impugned in the Writ Petition have been passed without considering the reply of the petitioner dated 29.03.2022 which was placed before the respondent no. 2 alongwith the Application filed u/s 154 of the Act by the petitioner."

5. Thus, from the facts as admitted in the short counter affidavit it is undisputed that the impugned order has been passed by the respondents arbitrarily and in gross violation of the principles of natural justice. Therefore, the impugned order dated 30.03.2022 under Section 148 A(d) and the impugned order dated 06.06.2022 under Section 154 of the Act, 1961 both passed by the respondent no.2 and the impugned notice dated 30.03.2022 under Section 148 of the Act, 1961, can not be sustained and are hereby quashed.

6. We are frequently coming across cases where Income Tax Authorities are giving complete go by to the principles of natural justice. The excuse orally being set up usually by the departmental counsels is that there is some problem in the computerisation system which is solely controlled by the respondent no.1 i.e. the Central Board of Direct Taxes, New Delhi, and they can not, at their own, correct the system.

7. Be as it may, the system has been introduced and is being implemented by the respondents and, therefore, it is their primary duty to immediately remove short comings, if any, in the system. For own wrongs

of the respondents, the assessee can not be allowed to suffer and put to harassment. Prevailing state of affairs clearly reflects that in the absence of any effective system of accountability of the erring officers, the harassment of the assesseees and breach of principles of natural justice by the Officers is resulting in uncontrolled situation. The practice of frequently violating principles of natural justice, non consideration of replies of assesseees under one pretext or the other or rejecting it with one or two lines orders without recording reasons for rejection, is gradually increasing which needs to be taken care of immediately by the respondents at the highest level, otherwise prevailing situation of arbitrary approach and breach of principles of natural justice may not only adversely affect the assesseees who pay revenue to the Government, but also may develop a perception amongst people/assesseees that it is difficult to get justice from the authorities in statutory proceedings.

8. For all the reasons aforesaid, the impugned order and the notice as aforesaid are quashed. Liberty is granted to the respondents to pass an order afresh under Section 148A(d) of the Act 1961 after affording reasonable opportunity of hearing to the petitioner. The respondent no.1 is directed to take forthwith all required steps to remove shortcomings in the system and to develop a system of accountability of erring officers/employees.

9. The writ petition is **allowed to the extent indicated above, with cost of Rs.50,000/-** which the respondents shall pay to the petitioner within two weeks by an account payee bank draft or RTGS.

Order Date :- 3.8.2022/vkg