

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2154/2022

(SAMADHA CORPORATION (PARTNERSHIP FIRM) **VERSUS** INCOME TAX OFFICER, WARD NO.5(3),
NAGPUR & ANOTHER)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Deepak Gupta, counsel for the petitioner.
Shri Anand Parchure, counsel for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : SEPTEMBER 20, 2022.

PC.

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

The challenge raised in this writ petition is to the order dated 31.03.2022 that has been passed by the Income Tax Officer invoking the provisions of Section 148A of the Income Tax Act, 1961 (for short, 'the said Act'). It is the case of the petitioner that the notice that was issued on 26.03.2022 under Section 148A(b) of the said Act required the response of the petitioner within a period of three days which was on or before 29.03.2022. Relying upon the provisions of Section 148A of the said Act it was submitted that under the said provisions minimum time of seven days has to be granted to an assessee to file his reply to the show cause notice. Since the notice with a shorter period was issued the same was in contravention of Section 148A of the said Act. Reliance is placed on the judgment of the Delhi High Court in **W.P.(C) 7385/2022** [*Shri Sai Co-operative Thrift and Credit Society Ltd. Versus Income Tax Officer, Ward 43-6*] decided on 12.05.2022.

The learned counsel for the respondents supported the impugned order and relied upon the affidavit-in-reply as filed. It is submitted that due opportunity was granted to the petitioner after which the impugned order came to be issued. Hence, there is no reason to interfere with the impugned order.

Having heard the learned counsel for the parties, we find that the show cause notice dated 26.03.2022 has sought response of the petitioner within a period of three days and before 29.03.2022. Section 148A(b) of the said Act requires grant of minimum time of seven days to an assessee to file its reply to the show cause notice. This specific stand has been taken by the petitioner in its communication dated 29.03.2022 and it has been urged that such notice is contrary to law. The Delhi High Court in *Shri Sai Co-operative Thrift and Credit Society Ltd.* (supra) has considered a similar position and has held that issuance of a show cause notice with a period lesser than seven days would vitiate the same. We find that the aforesaid decision supports the case of the petitioner.

In view of aforesaid, the order dated 31.03.2022 passed under Section 148A(d) of the said Act is set aside. The respondents are at liberty to take further steps in accordance with law and as permissible under the said Act.

The writ petition is disposed of in aforesaid terms. Rule accordingly. No costs.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

APTE