IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 17211 OF 2023 (T-IT)

BETWEEN:

SRI. KALURAM CHAWAT,
AGED 57 YEARS,
SON OF LATE KANNAIAHLAL JAIN,
29, MIG 1ST STAGE,
DEEPAK ENTERPRISES AND PAWN BROKERS,
KUVEMPUNAGAR MAIN ROAD,
MYSURU – 570 017.
(PAN NO.AFCPC5735P)

...PETITIONER

(BY SMT. JINITA CHATTERJEE, ADVOCATE FOR
SRI S. PARTHASARATHI, ADVOCATE)

AND:

1. THE INCOME TAX OFFICER
WARD 1(1),
REAC MYSURU,
KARNATAKA – 570 008.

2. THE ASSESSMENT UNIT
INCOME TAX DEPARTMENT,
NFAC, DELHI – 110 001.

...RESPONDENTS

(BY SRI. SUSHAL TIWARI, ADVOCATE FOR R1 & R2)

Digitally signed by CHANDANA B M
Location: High Court of Karnataka

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTICE DATED 24.05.2022 IN FILE NO. ITBA/COM/F/17/2022-23/1043144231(1) PASSED U/S 148A(b) OF THE ACT BY THE RESPONDENT FOR THE ASSESSMENT YEAR 2014-15 (ANNEXURE-'A') ANE ETC.

THIS PETITION, COMING ON FOR *PRELIMINARY HEARING IN 'B' GROUP*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks the following reliefs:

"(a) Issue a Writ of Certiorari or a direction in the nature of Writ of Certiorari quashing the impugned notice dt.24.5.2022 in File No.ITBA/COM/F/17/2022-23/1043144231(1) passed under sec 148A(b) of the Act by the Respondent for the assessment year 2014-15 (ANNEXURE-'A')

(b) issue a Writ of Certiorari or a direction in the nature of Writ of Certiorari quashing the impugned order dated 30.07.2022 in F.No.ITBA/COM/F/17/2022-23/1044341725(1) passed under Section 148A(d) of the Act by the Respondent for the assessment year 2014-15 (ANNEXURE-'C'); 2014-15;

(c) Issue a Writ of Certiorari or a direction in the nature of Writ of Certiorari quashing the impugned assessment order dated 18.5.2023 in F.No.ITBA/AST/S/147/2023-24/1052953078(1) passed under Section 147 rws 144B of the Act and demand notice issued u/s.156 dt.18.5.02023 in F.No.ITBA/AST/S/156/2023-24/1052953198(1) by the Second Respondent for the assessment year 2014-15 (ANNEXURE-S)

(d) issue a Writ of Prohibition or a direction in the nature of Writ of Prohibition restraining the respondent from enforcing the demand raised vide impugned assessment order dated 18.5.2023 in F.No.ITBA/AST/S/147/2023-

24/1052953078(1) passed under Section 147 rws 144B of the Act and demand notice issued under section 156 dt.18.5.02023 In F.No.ITBA/AST/S/156/2023-24/1052953198(1) by the Second Respondent for the assessment year 2014-15 (ANNEXURE-S);

(e) issue a Writ of Mandamus or a direction the nature of Writ of Mandamus in case the Hon'ble Court is not desired to quash the notice under sec 148A(b) to direct the assessing authority to provide the copy of the application for approval by the Pr.CIT and also the order of the Pr.CIT approving the reopening of the assessment under sec 147 of the Act and to direct the Respondent to furnish the information collected for justifying the reopening as prayed for to enable the petitioner to rebut and object;

(f) issue a Writ of Mandamus or a direction the nature of Writ of Mandamus directing the respondent to provide the materials collected to justify the formation of reason for reopening the assessment by issuing a notice under sec 147 of the Act to enable the petitioner to rebut before passing the order under sec 148A(d) followed by the issuance of notice 148 of the Act.

(g) pass such other order, direction or writ as this Hon'ble Court deems fit, and

(h) direct the Respondents to award the costs of this Writ Petition."

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. In addition to reiterating the various contentions urged in the memorandum of petition and referring to the material on record, learned counsel for the petitioner submits that respondent No.1 issued a show-cause notice under Section 148A(b) of the Income Tax Act, 1961 (for short, 'IT Act'), dated 24.05.2022. The petitioner filed its reply dated 27.06.2022 to the said notice. Respondent No.1 without considering the said reply and without providing an opportunity of personal hearing, has passed the impugned order under Section 148A(d) of the I.T. Act. It is submitted that if one more opportunity is provided to the petitioner for personal hearing by setting aside the impugned orders and notices, the petitioner would appear before the concerned respondent and once again submit his reply to the show-cause notice under Section 148A(b) along with relevant documents, which may be considered by the respondents and proceed further in accordance with law.

4. Per contra, learned counsel for the respondents submits that there is no merit in the petition and that the same is liable to be dismissed.

5. A perusal of the impugned order will indicate that it is an undisputed fact that petitioner has submitted reply / response, along with documents to Section 148A(b) notice requesting for an opportunity of personal hearing, which has not been considered by respondent No.1, who did not provide any opportunity of personal hearing to the petitioner and proceeded to pass the impugned order under Section 148A(d) of the I.T. Act. If one more opportunity is granted, petitioner would appear before the concerned respondent and submit reply along with documents, I deem it just and appropriate to set aside the impugned order at Annexure – C dated 30.07.2022 passed under Section 148A(d) of the IT Act and subsequent notice / orders, etc., and remit the matter back to respondent No.1 for reconsideration afresh from the stage of submitting of reply by the petitioner to Section 148A(b) notice and to proceed further in accordance with law.

6. In the result, pass the following:

ORDER

(i) The petition is hereby ***allowed***.

(ii) The impugned orders dated 30.07.2022 and 18.05.2023 respectively, at Annexures-C and S are hereby set aside.

(iii) Matter is remitted back to respondent No.1 for reconsideration afresh in accordance with law from the stage of submitting of reply to the Show Cause Notice under Section 148A(b) of the IT Act at Annexure-A dated 24.05.2022.

(iv) Liberty is reserved in favour of the petitioner to submit additional pleadings, documents, etc., to the respondent, who shall consider the same and provide an opportunity of personal hearing and proceed further, in accordance with law.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC
List No.: 2 Sl No.: 73