

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 9257 of 2022**

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SHREE SIDDHI FOODS

Versus

ASST. COMMISSIONER OF INCOME TAX, CIRCLE 1, BHAVNAGAR OR  
HIS SUCCESSOR

=====

Appearance:

MR SN DIVATIA(1378) for the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**

and

**HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 31/01/2023

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner is before this Court seeking following reliefs:

*“10(a) to issue a writ of certiorari or in the nature of certiorari or any other appropriate writ, orders or directions quashing and setting aside the impugned order u/s 148A(d) dated 31.03.2022 for A.Y.2018-19 passed by the Respondent (Annexure-A).*

*(b) to issue a writ of certiorari or in the nature of certiorari or any other appropriate writ, orders or directions of quashing and setting aside the impugned the notice u/s 148*

*of the Act issued by the Respondent on 31.03.2022 for A.Y.2018-19.*

*(c) to call for the records of the proceedings and look into them and be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing the impugned notice and order.*

*(d) Pending the hearing and final disposal of this petition to maintain status quo in the matter and ask the Respondent and its subordinates not to take any action or to do anything in furtherance and pursuance of this impugned order and notice both passed on dated 31.03.2022 for A.Y.2018-19.*

*(e) To pass this Petition with cost.*

*(f) To pass any further or other orders as the Hon'ble Court may deem proper in the interest of justice and in the circumstances of the case."*

2. This Court issued the notice. Other side appeared and reply has been filed, which is on merits. However, it is not in dispute that the reply which is filed by the petitioner before the Assessing Officer has not been taken into consideration at the time of passing

the order under Section 148A(d) of the Income Tax Act ('Act' for short). It appears that the show cause notice under Section 148A(b) of the Act dated 10.3.2022 was issued to the assessee, which filed the application on 17.3.2022 and sought for adjournment for a period of seven days, so that it can prepare the details. The reply had been filed on 25.3.2022. According to the Assessing Officer, the assessee has failed to file the additional details for more than fifteen days.

3. The request of adjournment for seven days was not acceded to by explicit order. Thereafter, when the order was passed under Section 148A(d) on 31.3.2022, he was oblivious of the reply which was tendered by the petitioner-assessee. This practice of not responding to the request of adjournment and thereafter to take the matter up at any time, when the Assessing Officer deems it appropriate, was not endorseable. Once there is a request for adjournment and if rejection has come, it should be clear rejection with proper reasons. If any time is required to be granted, there shall be a specific date which should be conveyed to the assessee. Here, it appears that being aware of the request of adjournment,

the Assessing Officer chose not to accede to such request and then unilaterally took up the matter on 31.3.2022 and also further noted that more than two weeks had elapsed from the time of issuing of the notice. The assessee has no access directly to the Assessing Officer and he would be completely clueless as to which is the date on which now the matter is to be next taken. Either there shall be a specific adjournment or specific order that requires communication. The least that can be done is that to send such communication through e-mail or any e-mode and then to proceed the matter further. Nothing of that sought was done and therefore this order of 148A(d) of the Act and issuance of notice under Section 148 of the I.T.Act deserves interference. Both need to be quashed. The matter goes back to the stage of considering the reply filed on 25.3.2022. Let due consideration be given to such reply by the Assessing Officer. The petitioner shall be conveyed specific time for filing of additional reply and also afforded an opportunity of hearing. Let there be a specific communication through e-mail or through portal. Without taking any adjournment, let the same be proceeded with after affording opportunities to the petitioner.

4. This petition is disposed of in the above terms.

(SONIA GOKANI, J)

(SANDEEP N. BHATT, J)

M.H. DAVE

