

Lack of supplying supporting documents for ‘reason to believe’ is a flagrant violation of the principles of natural justice

The Hon’ble Rajasthan High Court in *Micro Marbles Private Limited v. Office of the Income Tax Officer, Ward-1, Chittorgarh, Rajasthan [D.B. Civil Writ Petition No. 13719/2021 dated January 4, 2023]* set aside the notice issued by of the Income Tax Officer for reopening of assessment of the assessee on the grounds of reasons to believe that the assessee had escaped assessment. Held that, non-supply of documents referred in the ‘reason to believe’ notice along with the notice to the assessee deems the reassessment proceeding and any consequential proceedings illegal and is a flagrant violation of the principles of natural justice.

Facts:

Micro Marbles Private Limited (“**the Petitioner**”) is a private limited company involved in the manufacturing of marble slabs and tiles. The Petitioner received a notice dated March 30, 2021 (“**the Impugned Notice**”) under Section 148 of the Income Tax Act, 1961 (“**the IT Act**”) issued by the Office of the Income Tax Officer (“**the Respondent**”), stating that the Respondent had ‘reasons to believe’ that the income of the Petitioner for the Assessment Year 2017-18 (“**AY – 17-18**”) had escaped assessment, and the reason for issuance of the Impugned Notice was stated to the Petitioner that it had allegedly received bogus loan/sale/purchase amount of INR 93,21,520/-, as per the information received.

The Petitioner had filed objections to the Respondent dated June 9, 2021 stating that the Respondent is proposing to reopen its case not for reason to believe but for reason to suspect, which was subsequently disposed vide order dated August 18, 2021, holding that the same have no force. Consequently, the Petitioner was furnished with a Re-assessment Order dated March 29, 2022 under Section 148 of the IT Act (“**the Impugned Order**”).

Being aggrieved, this petition has been filed.

The Petitioner contended that necessary documents showing the alleged bogus entries were not provided to the Petitioner.

The Respondent had contended that the Petitioner had a statutory remedy of appeal against the Impugned Order under the IT Act and that the challenge against the Impugned Notice is meaningless in view of the Impugned Order. Hence, the writ petition is not maintainable.

Issue:

Whether the Impugned Notice is liable to be set aside on the grounds that supporting documents were not provided along with it?

Held:

The Hon'ble Rajasthan High Court in ***D.B. Civil Writ Petition No. 13719/2021*** has held as under:

- Noted that, the challenge is not only to the Impugned Notice or the order disposing of the objections of the Petitioner, but also to the Impugned Order.
- Opined that, w.r.t. the Impugned Notice there is no remedy available to the Petitioner other than a writ petition. Hence, the petition cannot be set-aside on the ground that the Petitioner has a statutory remedy against the Impugned Order and the petition is maintainable to the extent of challenging the Impugned Notice and that the successful challenge of the Impugned Notice shall automatically nullify the Impugned Order.
- Relied on the judgment of ***SABH Infrastructure Ltd. v. Assistant Commissioner of Income Tax [(2017) 398 ITR 198 (Delhi)]*** wherein the Hon'ble Delhi High Court had laid out the guideline stating that when "reasons to believe" notice refer to another document, whether as a letter or report, that document and/or relevant portion of such document should be included along with the reasons. Further noted that, as per the guidelines laid down, the supply of documents referred to in the reasons to believe

becomes inevitable and in the event such documents are not supplied, it would be flagrant violation of the principles of natural justice.

- Further relied on the Hon'ble Bombay High Court judgment in the matter of ***Tata Capital Financial Services Limited v. Assistant Commissioner of Income Tax Circle & Ors., [Writ Petition No.546/2022 dated February 15, 2022]***, wherein the Court had directed the Department to adhere to certain guidelines while reopening assessment proceedings and had reiterated the Hon'ble Delhi High Court decision and held that the Assessment Officer should not only include the 'reasons to believe' in the notice sent to the assessee, but they should also attach any other relevant documents, letters, or reports referred to in the reasons.
- Observed that, the Impugned Notice only stated that the Respondent had 'reason to believe' that the Petitioner had escaped assessment, but it did not mention any specific terms on the basis of which the Respondent had such 'reason to believe'. Hence, the Petitioner was not able to file a proper and effective reply/objections to the reasons to believe. Further, no document supporting the 'reason to believe' was supplied to the Petitioner. Hence, the 'reason for believe' provided to the Petitioner are incomplete and do not provide the Petitioner with a fair and adequate chance to object against such reassessment.
- Stated that, the failure to provide the necessary documents along with the Impugned Notice is enough to invalidate the reassessment proceedings.
- Held that, the non-supply of the materials referred to in the Impugned Notice to the Petitioner means that the entire process of reopening the assessment and any resulting proceedings is legally invalid.
- Set aside the Impugned Notice and the order disposing of the objections and declared all consequential proceedings including the Impugned Order to be illegal.
- Permitted the Respondent to take up a fresh exercise for reassessment, if necessary, in accordance with law.

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