

Court No. - 3

Case :- WRIT TAX No. - 195 of 2024

Petitioner :- Gyan Prakash Rastogi

Respondent :- Union Of India Thru. Secy. Ministry Of Finance , New Delhi And Others

Counsel for Petitioner :- Aakash Prasad,Himanshu Singh

Counsel for Respondent :- A.S.G.I.,Kushagra Dikshit

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Shree Prakash Singh,J.

1. Heard learned counsel for the petitioner, Sri Varun Pandey, learned counsel for the respondent no.1 and Sri Neerav Chitravanshi, Advocate alongwith Sri Kushagra Dikshit, learned counsel for the opposite parties no. 2 and 3.

2. This writ petition has been filed with the following main prayers:-

"a. Issue a writ, order or direction in the nature of Certiorari quashing the Impugned Notice dated 20.04.2024 u/s 148 of the IT Act, issued by the Respondent No.3 with prior approval of Respondent No.2 (Annexure No.3).

b. Issue a writ, order or direction in the nature of Certiorari quashing the Impugned Order dated 20.04.2024 passed by the Respondent No.3 u/s 148A(d) of the IT Act (Annexure No.2);

c. Issue a writ, or direction in the nature of Certiorari quashing the Impugned Show Cause Notice dated 27.03.2024 issued by the Respondent No.3 u/s 148A(b) of the IT Act (Annexure No.1);

d. Issue a writ, order or direction in the nature of Mandamus directing the Respondents to supply to the Petitioner certified copies of the entire record of the assessment proceedings as well as the Reassessment proceedings;"

3. It is the case of the petitioner that the petitioner and his brother conducted their separate businesses of trading of jewellery under the name of M/s Sidhnath Abhushan Bhandar and M/s S. R. Traders from a shop at Shiv Prasad Chowk, Lucknow. They, later on, acquired another shop at Bahoran Tola, Chowk, Lucknow for expansion of their respective businesses. The petitioner and his brother shifted to the new premises at Bahoran Tola, Chowk, Lucknow on 03.02.2020. The respondents initiated search and seizure operation under Section 132 of the Income Tax Act at the joint shop of the petitioner at Bahoran Tola, Chowk, Lucknow on 12.02.2020. During the search and seizure operations cash, gold jewellery and silver jewellery were found alongwith loose documents and sheets. The loose documents and sheets were impounded, but the gold and silver were considered stock in trade, and therefore, were not seized. On 23.12.2020, the case of the petitioner was dealt with and a questionnaire was issued to him under Section 142(1) on 28.01.2021. The questionnaire sought explanations to the unaccounted cash, jewellery and loose documents & sheets. On 31.01.2021, the petitioner filed his return of income declaring a total income of Rs. 16,65,590/- only. On 19.02.2021, the Assessing Officer issued notice under Section 142(1) to the petitioner to produce relevant documents and accounts in support of the returns filed by the petitioner. The petitioner filed his reply to the notice. Thereafter, the Assessing Officer passed an order under Section 143(3) of the Act on 02.09.2021 wherein certain additions were made to the income that was declared by the petitioner on the basis of unexplained cash and on account of excess stock not recorded in the books of accounts. The petitioner preferred an appeal on 30.09.2021 before the Commissioner of Income Tax against the Assessment Order dated 02.09.2021. During the pendency of the appeal, the Revenue Audit raised an objection to the Assessment Order dated 02.09.2021 that the Assessment has not been conducted in a manner prescribed by the Act and there was violation of Section 69(A) of the Act. The Respondents issued notice on the basis of Audit Objections under Section 148A(b) of the Income Tax Act on

27.03.2024. The petitioner submitted a detailed reply wherein he asked for copies of Audit Objections and all relevant documents and also asked for personal hearing, a copy of the reply dated 12.04.2024 has been filed as Annexure-12 to the writ petition. However, order has been passed by the Respondent under Section 148A(d) of the Act on 24.02.2024 rejecting the reply submitted by the petitioner without providing him copies of Audit Objections and also without providing him opportunity of personal hearing. A notice under Section 148 of the Act has also been issued on the same date on 24.02.2024, proposing reassessment of income. On 06.05.2024, the petitioner again applied for certified copies of the record of assessment proceedings as well as reassessment proceedings. This application was filed alongwith payment of requisite fee, however, no documents have been provided.

4. Learned counsel for the petitioner has placed reliance upon the judgement rendered by the High Court of Madras (Madurai Bench) in the case of **Beboy Joseph John Vs. Assistant Commissioner of Income Tax** reported in **MANU/TN/9885/2022** and paragraphs 2, 12 and 13 thereof and a judgement rendered by the High Court of Bombay in the case of **Tata Capital Financial Services Limited Vs. Assistant Commissioner of Income Tax** reported in **MANU/MH/1049/2022**.

5. Learned counsel for the petitioner has also placed reliance upon a Circular issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes on **22.08.2022** regarding uploading of data on functionalities/portal of the Income Tax Department and Guidelines for issuance of notice under Section 148 of the Income Tax Act.

6. Learned counsel for the petitioner has read out the amended instructions especially instruction relating to the assessee making a request for personal hearing to be respected and reasonable opportunity to be given to the assessee.

7. Learned counsel appearing for the respondents

no. 2 and 3, however, has referred to a judgement rendered by the High Court of Kerala at Ernakulam in the case of **M/s Sree Narayana Guru Memorial Educational and Cultural Trust Vs. The Assistant Commissioner of Income Tax** in **Writ Petition (C) No. 11891 of 2023** decided on **19.02.2024**.

8. We have gone through the judgements cited by the learned counsel appearing for the respondents no.2 & 3 and paragraph-6 thereof, which is being quoted herein below:-

"6. Learned Counsel for the petitioner has placed reliance on the judgment of the Supreme Court in the case of Indian and Eastern Newspaper Society v. Commissioner of Income Tax'. However, the said judgment was rendered when there was no such clause as has been inserted with effect from 01.04.2022 in Explanation 1 of Section 148 of the Act. Therefore, in my view, the said judgment is of no relevance to the facts of the present case. In the present case, the provisions have been drastically changed with effect from 01.04.2022, and the audit objection is one of the reasons for re-opening the assessment. If the revenue audit raises an objection that the assessment was not completed in accordance with the provisions of the Act, it cannot be treated as a change of opinion because this is 'the statutory prescription and statutory ground/reason for re-opening the assessment. The Assessing Authority has proceeded strictly in accordance with the provisions of Clause (ii) of Explanation 1 to Section 148 of the Act. Therefore, I find no error of law or jurisdiction in the impugned order. Therefore, the writ petition is dismissed."

9. From the judgement of the High Court of Kerala at Ernakulam, it is not clear at all where the High Court of Kerala has held that the respondent can ignore the Circular dated 22.08.2022 or even the Circular dated 01.08.2022 issued by the Central Board of Direct Taxes.

10. Learned counsel for the respondents, at this stage, has pointed out that he has only cited the judgement of Kerala High Court to show that the

objection taken by the petitioner with regard to Audit Objections not being considered to be an information that can be relied upon for issuance of a show cause notice under Section 148A(b) was untenable.

11. Learned counsel appearing on behalf of the respondents no.2 & 3 has also cited a judgement by the Coordinate Bench of this Court in ***Writ Tax No. 968 of 2023, "Vivek Saran Agarwal Vs. Union of India and 3 Others"***, and has relied upon the observations regarding detailed hearing not being necessary to be given at the stage of issuance of show cause notice under Section 148A(b) and before passing of the order under Section 148A(d). It has also been observed by the Division Bench that thrashing out of evidence and relevant statutory provisions shall be considered only after the order under Section 148 for reopening of assessment is passed.

12. Learned counsel for the respondents no. 2 & 3 has also relied upon the judgment rendered by the Hon'ble Supreme Court in the Case of ***Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others*** reported in ***2008 (14) SCC 218*** and also in the case of ***Anshul Jain Vs. Principal Commissioner of Income Tax in Special Leave to Appeal No. 14823 of 2022*** decided on 02.09.2022.

13. We do not dispute the law as settled not only by the Coordinate Bench of this Court in *Vivek Saran Agarwal (Supra)*, but also by the Supreme Court in the Case of *Raymond Woollen Mills Ltd. (Supra)* and *Anshul Jain (Supra)*.

14. This Court has not made any observations regarding the merits of the case that has been set up by the petitioner before the Assessing Officer. It is only with respect to providing reasonable opportunity of hearing as per Circular dated 22.08.2022 of the Central Board of Direct Taxes that this Court has found that such reasonable opportunity of hearing was not given before Order under Section 148(d) was issued.

15. In our considered opinion, there is no dispute

regarding explanation given under Section 148 regarding information that can be relied upon by the Assessing Officer to reopen assessment of escaped income. Revenue Audit Objections can be considered as a valid ground for opening assessment that has concluded.

16. This Court is of the considered opinion that the reply of the petitioner had specifically asked for documents to be supplied including complete case proceedings and for personal hearing, which was not given. The Assessing Officer has acted in undue haste.

17. The orders dated 24.02.2024 under Section 148A(d) and under Section 148 are **set aside**. The respondents shall provide all relevant documents that have been asked for by the petitioner in his representation by making payment of necessary fees to the department, within a period of one week from today. The petitioner shall submit his reply within one week, thereafter. A personal hearing shall be given by the Assessing Officer, and an order under Section 148(d) be passed after considering the submissions made by the petitioner in his reply as also his personal hearing within three weeks, thereafter.

18. Accordingly, the writ petition is **allowed** only to this extent.

Order Date :- 26.7.2024
Darpan Sharma