IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3290 OF 2024

Samp Furniture Pvt. Ltd. …Petitioner

Versus

Income Tax Officer, Ward 3(3)-Thane & Ors …Respondents

Mr. Devendra Jain, Advocate for the Petitioner.

Mr. Akhileshwar Sharma, Advocate for Respondents.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATE : AUGUST 05, 2024

PC :

1. This is a classic case of an absolute abuse of the powers vested in the public officer namely, the Jurisdictional Assessing Officer (for short "**JAO**"), Income Tax Officer, Ward 3(3)-Thane. We begin this order saying so, as we find that the JAO has either acted with total non-application of mind or otherwise, initiating proceedings against the Petitioner under Section 148A of the Income-tax Act, 1961 (for short "**the Act**") as also in issuing the notice under Section 148. In our opinion, the irresponsible and/or not an honest conduct (we do not know) of the JAO

is further compounded from the reading of the reply affidavit filed to this Petition in which, not a slightest attempt is made, to point out as to why the JAO did not take into consideration the Assessment Order dated 20 December, 2019 passed under Section 143(3) of the Act. This for the reason that the assessment order considers the very transaction which is the subject matter of the notice issued to the Petitioner under Section 148A(b), i.e., an amount of Rs.4 Crores deposited by the Petitioner in his bank account No.005013600000217 on 10 November, 2016, after demonetization. Significantly the Petitioner has annexed to the Petition, assessment order dated 20 December, 2019, wherein in paragraph 16, the Assessing Officer had taken into consideration such deposit and added the said amount to the Petitioner's income. Further the Petitioner being aggrieved by such order had approached the Commissioner of Income Tax Appeal (for short "CIT(A)") who passed an order dated 26 February, 2024 deleting such addition. All such material along with the documents was always available on the record of the department and the concerned Assessing Officer. The order of the CIT(A) has also been annexed to the petition.

2. The Petitioner's contention is that despite the order in appeal passed by the CIT(A), for the reason only known to the JAO, the Petitioner is issued the impugned notice under Section 148 of the Act, on the very same ground as set out in the annexure to the notice under Section 148A(b) dated 8 February, 2024.

3. Although at the time the notice under Section 148A(b) was issued (i.e., on 8 February, 2024), the order by the CIT(A) was yet to be passed (as passed on 26 February, 2024), however, by the time the order under Section 148A(d) was passed on 8 March, 2024, the JAO was fully aware of the outcome in the Appeal. The order passed under Section 148A(d) is conspicuously silent about such adjudication on the very facts, on which reassessment is being contemplated. The JAO himself was a party to the Appeal, hence he was aware about the order dated 26 February, 2024 passed by the CIT(A). Even the writ petition has annexed the order passed by the CIT(A) and yet, the reply affidavit simply does not comment/deal with the same.

4. Things do not stop at this. Despite all such materials being available with the department, a mechanical sanction has been granted

under Section 151(ii) of the Act by the Chief Commissioner of Income-tax, which is also without application of mind. It is on such backdrop, contrary to the provisions of Section 151A namely, outside the faceless mechanism as applicable under the notification dated 29 March, 2022 issued by the Central Government, the impugned notice under Section 148 of the Act was issued to the Petitioner.

5. On the above backdrop, the Petitioner is before the Court challenging the notice under Section 148A(b) and the order passed thereon under Section 148A(d), as also, the notice under Section 148.

6. The primary grievance of the Petitioner to such actions initiated by concerned officers against the petitioner, is that the impugned proceedings are initiated with gross non-application of mind and/or much more than mechanically, as the entire basis of such notices is the amount which was subject matter of consideration of the Assessing Officer in the assessment order which has ultimately resulted in its deletion. So also, the impugned notice under Section 148 dated 8 March, 2024 is issued contrary to the provisions of Section 151A, it is hence, submitted that the impugned actions/notices would be required to be held illegal, including

on the basis of the principles as laid down by Division Bench of this Court in *Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax & 4 Ors.* [1]. Also the sanction as accorded under Section 151 is without application of mind and/or mechanical.

7. A reply affidavit is filed to this Petition of Mr. Naresh Kumar, the JAO which has shocked our conscience. What surprises us is the approach of the JAO, when at the first instance he refuses to acknowledge the Petitioner's case in regard to the amount of Rs.4 Crores already being considered on its merits in the assessment orders, wherein the JAO had added such amounts to the Petitioner's income. The assessment order is dated 20 December, 2019 in which the Assessing Officer in regard to the said amount has made the following observations:-

> 16. In view of above facts, the cash deposit amount of Rs.4,00,00,000/- during FY 2016-17 in this is liable to be assessed as income u/s 69A r.w.s 115BBE of the I.T. Act for the reasons mentioned above. Accordingly, an amount of Rs.4,00,00,000/- is hereby added to the total income of the assessee u/s 69A r.w.s. 115BBE of the Income-tax Act for the year under consideration. Further, addition in this case has been made u/s 69A of the Act, therefore, **penalty proceedings u/s 271AAC of the Act is initiated separately for the year under consideration.**

[1] (2024) 464 ITR 430

17. After verification of the detailed discussion as above, the income of the assessee is assessed as under:

Returned income	Rs. 20,09,955/-
Add: As per para 14	Rs. 4,00,00,000/-
Total Income	Rs. 4,20,09,965/-
Assessed Income	**Rs. 4,20,09,970/-**

8. At the second instance, the deponent of the reply affidavit has not accorded any sanctity to the order dated 26 February, 2024 passed by the CIT(A) in appellate proceedings under Section 250 of the Act, wherein on this very issue, such addition as made by the Assessing Officer had stood deleted. We do not find that there was any acceptable / cogent reason or any justification whatsoever, for the Assessing Officer not to consider, discard and overlook the legal effect of such orders passed by the appellate authority. Such significant material which had a direct bearing on any notice to be issued under Section 148A(b) and an order to be passed thereon, and in issuance of further notice under Section 148, in our opinion is certainly quite gross, amounting to a dereliction of duty, discarding from the path of law.

9. It also cannot be accepted that the JAO was totally alien to the

proceedings leading to the assessment order dated 20 December, 2019 and the subsequent appellate proceeding before the CIT(A) culminating into the order dated 26 February, 2024. In such context a perusal of the reply affidavit in fact indicates that quite astonishingly the Assessing Officer has thought it proper not to deal with such vital facts, which were paramount in initiating any reassessment proceedings, on the very same issue, which had attained finality. The JAO in fact proceeded to resort to a Section 148 action, as if there is no assessment order dated 20 December, 2019 and the appellate order passed by CIT(A). This is clear from the reasons the JAO has set out in paragraph 7, 8 and 9 of the reply affidavit. Such statements and/or justifications to initiate action under Section 148A(b) and (d), as rightly pointed out on behalf of the Petitioner, shows something more than a gross non-application of mind.

10. Further, what has disturbed us more, is that when a reply affidavit is filed, it needs to deal with the Petitioner's case in the writ petition, in which the Petitioner has unfailingly annexed the assessment order as also the orders passed by the CIT(A) which are on the amounts subject matter of the impugned notices. This position would be clear even

to a layman, that there were prior proceedings qua the very same amounts being added to the Petitioner's income, and the subsequent deletion of these amounts by the appellate authority. In the reply affidavit, there is not a whisper of acknowledgment to these facts, much less any statement in denial, on case made out by the Petitioner so as to point out to the Court as to how these orders would not be relevant in the context of the notice issued when the amount of Rs.4 Crores being the deposited in the very same account, was subject matter of consideration and assessment in passing the assessment order as noted by us hereinabove. All this indicates that the deponent has not only shown total discourtesy but also was callous much less not truthful in his approach, to file such affidavit before the Court. Being the JAO, the deponent was certainly required to discharge his duties in accordance with law, when he is supposed to wield such enormous powers, conferred on him in law. Such power is coupled with an onerous public duty and responsibility to act in accordance with law. It is least expected that the JAO would act mechanically and for any extraneous reason initiates proceedings against the assessee.

11. This apart we also find that quite absurd and unwarranted

statements are made by the JAO in paragraph 12 of the reply affidavit, when he says that the department does not agree with the judgment of this Court in *Hexaware Technologies Limited (Supra)*. It may be that the Revenue has not "accepted" the judgment but it would not mean that till the same is set aside in a manner known to law, the same has lost its binding force as the deponent intends to say in paragraph 12, so as to proceed as if there is no such desicision of this Court, and much less a binding decision. It is noteworthy that this very approach of treating judgments being "not acceptable" is in the teeth of the law as laid down by the Supreme Court deprecating such conduct of the authorities. In *Union Of India And Others vs. Kamlakshi Finance Corporation Ltd*[2] the Supreme Court in identical circumstances held as under:-

> 6. *Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer.* But what Sri Reddy overlooks is that *we are not concerned here with the correctness or otherwise of their conclusion or of any factual malafides but with the fact that the officers, in reaching in their conclusion,by-passed two appellate orders in regard to the same issue which were placed before them,one of the Collector (Appeals) and the other of the Tribunal*. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. *It cannot be too vehemently*

[2] 1992 (1) SCC SUPP 443

> ***emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities***; The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the ***orders of the higher appellate authorities should be followed unreservedly*** by the subordinate authorities. ***The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it*** unless its operation has been suspended by a competent court. ***If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.***
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> *****
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> **12.** We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. ***It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assesses-public without any benefit to the Revenue***. We would like to say that the department should take these observations in the proper spirit. ***The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them***.
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> [*Emphasis Supplied*]

13. While the aforesaid judgment was passed by the Supreme Court way back in 1991, the declaration of the law as laid down in such

decisions appears to not have been absorbed and overlooked.

14. In the above circumstances, we must observe that although we have a pronouncement of a co-ordinate Bench of this Court on the provisions of law, in *Hexaware Technologies Limited (Supra)*, an affidavit cannot be filed before this Court, to challenge such pronouncement. We are unaware as to how and in what manner the JAO/ the Respondents are advised to file such affidavits. Clearly on affidavit a position being taken that the judgment on a point of law declared by this Court, is not acceptable, is wholly irresponsible. The concerned officers who are supposed to know the Income Tax Act and the law, that the decisions of the jurisdictional High Court would bind them, cannot have an approach of such open disregard to the orders passed by this Court. It is also not the case that before they file any affidavit in the Court they are not legally advised, as to what ought to be an appropriate and proper content of an affidavit, as the law would require the department to file. Also the officer/ deponent needs to know the purpose for which a reply affidavit is necessary in a legal proceeding. A reply affidavit certainly cannot be a mechanical exercise and an empty formality and / or for that matter for

any statistical purpose. The present case reflects a very poor state of affairs on the part of the JAOs which is also not being corrected by the higher officials namely, the Commissioner and Chief Commissioner of Income-tax. In the present case even the Chief Commissioner of Income Tax has acted with total non-application of mind. As seen from paragraph 13 of the affidavit, what has been mechanically done is, by some method of online as well as offline, an approval has been accorded by the Chief Commissioner of Income Tax on 7 March, 2024, the same being made available on the order sheet for issuance of the impugned notice. There is no explanation whatsoever as to why such materials which were on the record of the department were not considered and dealt in according such approval. It thus appears that the Chief Commissioner of Income Tax has also acted without application of mind, this has clearly caused prejudice and harassment to the Petitioner. Nowhere the provisions of the Act would justify such action permitting the Chief Commissioner to exercise powers under Section 151 in such manner. In fact in exercising authority in such manner, the whole purpose of a sanction under Section 151 stands defeated, which would be actions against the object and spirit of the provisions of law resulting in civil consequences. It appears that in the

present proceedings the Chief Commissioner has also acted, with quite a haste. For all these reasons, we are more than sure that this is a fit case, where not only the reliefs as prayed by the Petitioner are required to be granted, but also the brazen untenable stand of the Respondents on what has been observed hereinabove needs to be deprecated. The JAO has refused to acknowledge the orders passed by the CIT(A) involving the very amounts in regard to which the reply affidavit is blissfully silent. This is in fact travesty of law and nullifying the binding effect of the orders passed by the appellate authority.

15. In the above circumstances, we would be failing in our duty if we do not reprimand such conduct of the JAO in discarding materials which, in fact, prohibited him from issuing the impugned notice as also the Chief Commissioner when he accorded a mechanical sanction. Apart from this, except for the brazen stand taken by the JAO that the decision of this Court in *Hexaware Technologies Limited (Supra)* is not accepted by the department, so as to justify the impugned notices, there is no acceptable justification as to why the proceedings qua the impugned notice under Section 148 would not stand covered by the decision in *Hexaware Technologies Limited (Supra)*.

16. We accordingly allow this Petition in terms of prayer clause (a).

17. Considering our observations as made above, we direct the JAO as also the Chief Commissioner to deposit personal cost of Rs.25,000/- each, to be deposited with the "**National Association for the Blind**", having its office at 11/12 Khan Abdul Gaffar Khan Road, Opp. Bandra Worli Sea Link, Mumbai, India (nabindia.org.in) within two weeks from the day a copy of this order is available.

18. Disposed of in the aforesaid terms.

[SOMASEKHAR SUNDARESAN, J.] [G. S. KULKARNI, J.]