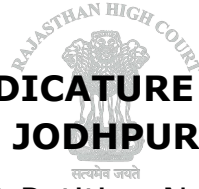




[2024:RJ-JD:8397-DB]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 10306/2023

Mahaveer Jain S/o Kundan Mal Minni, Aged About 36 Years, R/o
M/s Kundan Mal Mahaveer And Co. Near Chitra Ice Factory,
Bhinasar, Bikaner - 334303

----Petitioner

Versus

Income Tax Officer, Ward-1(2), Aaykar Bhawan, Rani Bazar
Bikaner, Rajasthan 334001

----Respondent

For Petitioner(s) : Mr. Aditya Vijay through V.C.
Mr. Pankaj Arora
For Respondent(s) : Mr. K.K. Bissa

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Reportable**Order****13/02/2024**

1. Aggrieved by the reopening of the assessment for the assessment year 2019-20, vide impugned order dated 29.03.2023 passed by the ITO Ward-1(2), BKN in exercise of powers conferred under Section 148A(d) of the Income Tax Act, 1961, the petitioner has filed this writ petition. Consequential notice under Section 148 of the Act, has also been assailed.

2. Quint essential facts, necessary for determination of the cause and controversy raised in this petition, as succinctly stated in the writ petition, are that the petitioner is an individual assessee and for the year under consideration i.e. the assessment year 2019-20, he filed return of income declaring his income as Rs.6,17,070/- on 2nd October, 2019. A notice under Section 148 A(b) of the Act, however, came to be issued on 14.03.2023 on the



basis of the alleged information received from DDIT (Inv.), Mumbai that the petitioner opted accommodation entries of Rs.50,00,000/- through Allbright Electricals Pvt. Ltd. A reply was submitted by the petitioner in which the petitioner sought to explain that he had not made any such transaction with M/s Hubtown Limited or Mahavir Chand Duggar and he has not taken any loan from Allbright Electricals Pvt. Ltd. but has given advance to the Allbright Electricals Pvt. Ltd. in the month of November, 2018 amounting to Rs.65,00,000/- and that was duly paid back in installments in the month of January, 2019 and March, 2019. Petitioner's further case was that Allbright Electricals Pvt. Ltd. was not managed by Mahavir Chand Duggar but is run by Vinod and Sunita Singhvi. The petitioner also asserted that Allbright Electricals Pvt. Ltd. is not a share company and the same is a non-banking financial corporation and the same is a licensed NBFC. Various documentary evidence were also annexed with the reply and request was made to provide copies of the statements of Mahavir Chand Duggar and all other documentary evidence relied upon by the authorities to come to the conclusion that petitioner had taken alleged accommodation entries. Petitioner also referred to the notification dated 01.08.2022, issued by CBDT, mandating Revenue to provide information received from the information wing, as also the documents required by the petitioner.

3. However, vide order dated 29.03.2023, the ITO concerned recorded opinion that Rs.50,00,000/-, alleged to be transacted, involved the petitioner and Allbright Electricals Pvt. Ltd., did not form part of the return submitted by the petitioner and, therefore, for that reason, the income of Rs.65,00,000/-, chargeable to tax,





has escaped assessment in the return filed by assessee for the assessment year 2019-20.

4. Learned counsel for the petitioner contended before us that the order impugned not only suffers from procedural impropriety but also error of law and fact both. Learned counsel, elaborating his submissions, would contend that though the notice under Section 148 A (b) discloses information, all the documents and material records wherefrom such information was extracted and collected, were not supplied to the petitioner which violated mandate of the circular dated 01.08.2022. He would submit that the statements of persons, excel-sheets and all other documents which form material basis to initiate proceedings on the basis of the information derived from aforesaid statements and documents, were bound to be supplied to the petitioner.

5. Next submission of learned counsel for the petitioner is that the petitioner had also prayed for personal hearing, which was not afforded to him. Once the petitioner had specifically asked for personal hearing, the authority was duty bound to afford an opportunity of hearing in which the petitioner could have satisfied the authority that present was not a case of reopening the assessment. This opportunity, having been denied, the impugned order apart from various illegalities pointed out, suffers from violation of principles of natural justice and fairness.

6. Next submission of learned counsel for the petitioner is that the impugned order is mechanical, non-speaking and without consideration of the material objections raised by the petitioner. He would submit that except quoting, the objections raised by the petitioner, the competent authority has only performed formality



and has not met out any of the objections by giving reasons, much less weighty reasons, as to why the objections were not sustainable. He would submit that the ITO concerned had completely pre-judged the issue. He did not apply his mind to the admitted facts on the record that the banking transaction details clearly disclose the details of transaction between the petitioner and Allbright Electricals Pvt. Ltd. and that it was not a case of any accommodation entries but a case of advance made available by the petitioner to Allbright Electricals Pvt. Ltd., which was later on repaid in installments. In support of his submissions, learned counsel for the petitioner relied upon the decisions of various High Courts in the cases of **Anwar Mohammed Shaikh Vs. Assistant Commissioner of Income Tax [(2023) 292 Taxman 414(Bombay)]**, **Sru Steels Ltd. Vs. Income Tax Officer [(2023) 150 taxmann.com 121 (Delhi)]**, **Yuva Trading Co. (P.) Ltd. Vs. Income Tax Officer [(2023) 292 Taxman 598 (Gujarat)]**, **Krishna Diagnostic (P.) Ltd. Vs. Income Tax Officer, Ward 143 [(2023) 151 taxmann.com 499 (Delhi)]**, **Alkem Laboratories Ltd. Vs. Principal Commissioner of Income Tax [(2023) 152 taxmann.com 133(Patna)]** and **Packirisamy Senthilkumar Vs. Government of India [(2023) 153 taxmann.com 640 (Madras)]**.

7. *Per contra*, learned counsel for the respondents would submit that upon receipt of information from DDIT (Inv.) Mumbai regarding a heavy transaction having taken place between the petitioner and Allbright Electricals Pvt. Ltd. and that it was not reflected in the income tax return of the petitioner, the information was supplied to the petitioner by issuing him a notice under



Section 148 A (b) of the Act. The petitioner was afforded due opportunity of hearing. The petitioner submitted his reply which was duly considered and only thereafter, the ITO concerned has passed the order of reopening assessment followed by notice under Section 148 of the Act. He would submit that at this stage, there is no determination regarding taxability that the entire amount of Rs.65,00,000/- is liable to taxation but it is only the exercise of reopening assessment, as the aforesaid amount escaped assessment. He would further argue that all the objections which are being raised herein are to satisfy the authority and the Court that the aforesaid amount had escaped assessment is not taxable in nature. Learned counsel for the Revenue would submit that those arguments, will receive consideration in accordance with law during reassessment proceedings, where the petitioner will get full opportunity to satisfy the Assessing Authority during the reassessment proceedings as to why the income which escaped assessment should not be taxed. He would further submit that once the petitioner admits that he has not disclosed the aforesaid transaction in the income tax return, the jurisdiction is arrived at to reopen assessment in exercise of powers under Section 148A of the Income Tax Act and, therefore, merely because supply of documents and personal hearing have not taken place, in the peculiar circumstances of the present case, challenge to the order is not sustainable in law. Learned counsel for Revenue places reliance on the Division Bench judgment of this Court in the case of **M/s Chetak Enterprises Ltd. Vs. The Assistant**



Commissioner of Income Tax [D.B. Civil Writ Petition No.7062/2022].

8. We have heard and perused the records and given anxious consideration of the respective submissions made by learned counsel for the parties.

9. A perusal of the notice under Section 148 A (b) of the Act reveals that the basis for issuance of notice was receipt of information from DDIT (Inv.) with regard to a heavy transaction having taken place between the petitioner and one Allbright Electricals Pvt. Ltd. It further reveals that a search action under Section 132 of the IT Act was conducted by the office of DDIT (Inv.), Mumbai on M/s Hubtown Limited Ltd on 30.07.2019. As per the search proceedings, statement of Mr. Mahaveer Duggar was recorded on oath. Data backup of laptop and iphone in possession of Mahaveer Duggar were also collected. In the laptop, some excel-sheets were found in which names of various entities were found. Notice further says that Shri Mahaveer Duggar confirmed that the excel-sheets in the laptop contain details of accommodation entries provided by him to various beneficiaries in the form of unsecured loan. The aforesaid information includes the information regarding the petitioner also having taken accommodation entries of Rs.50,00,000/- through Allbright Electricals Pvt. Ltd (operated by entry provider Mr. Mahaveer Duggar) in the form of unsecured loan. The notice clearly stated that when the ITR for the assessment year 2019-20 was perused it was seen that the petitioner had not shown any transaction made with Allbright Electricals Pvt. Ltd. or Mr. Mahaveer Duggar in his audit report/ITR.



10. On the above basis, the ITO *prima facie* opined that the aforesaid transaction remained unexplained from ITR and other financial statements filed by the petitioner.

11. It would thus be seen that the basis of initiating notice under Section 148A(b) was information regarding transaction between the petitioner and Allbright Electricals Pvt. Ltd. Section 148A(a) provides that the Assessing Officer shall, before issuing any notice under Section 148, conduct an enquiry, if required, with the prior approval of the specified authority, with respect to the information which suggests that income chargeable to tax has escaped assessment. The Assessing Officer initiated enquiry with regard to the information, as contained in the annexure appended to the notice, and elaborately dealt with, which is referred to herein above. The information, in our opinion, taken as it is, definitely suggests that the income chargeable to tax has escaped assessment. Use of the word "suggest" denote the legislative intent that that no conclusion at that stage is required to be arrived at but only a *prima facie* consideration is necessary to initiate proceedings under Section 148A. The materials, which have been disclosed, can neither be said to be patently false, much less irrelevant or extraneous to the relevant assessment year and the transactions made by the petitioner.

12. The petitioner was given an opportunity of being heard. Though number of grounds were urged by the petitioner, apart from his demand for supply of various documents and material from which the information was collected and shared with the petitioner, they are more in the nature of explaining the transaction to say that the transaction amount of Rs.50,00,000/-



was not taxable. However, this is not the stage where assessment has to be carried out. The Assessing Authority, at this stage of making enquiry under Section 148A, does not make any assessment but the purpose of enquiry is to find out whether any income chargeable to tax has escaped assessment. That being the limited object and purpose of enquiry under Section 148A of the Act, by its very nature, the purpose of enquiry is only to find out whether a case for reassessment is made out or not and not whether any stated amount is liable to tax because that issue would be examined in detail at the stage of reassessment proceedings.

13. Clause (d) of Section 148A clearly reveals that after receipt of reply in response to the notice under Clause (b), the Assessing Officer is required to decide, on the basis of material available on record, including the reply of the assessee, whether or not it is a fit case to issue notice under Section 148. Therefore, the enquiry under Section 148A is intended to decide whether a case of reopening of assessment is made out or not. Therefore, from the very nature of the enquiry contemplated under Section 148A, it cannot be said that a detailed enquiry and minute examination and scrutiny of each and every material on record and hearing to the assessee is necessary at this stage. Once the information which suggests that income chargeable to tax has escaped assessment, a case for reopening of the assessment is made out.

14. We would have appreciated the submission of learned counsel for the petitioner regarding non-affording of opportunity of oral hearing and also non-supply of certain documents, which were made basis for information appended to notice under Clause



(b) but for the admission on the part of the petitioner that the transaction in dispute was not reflected in the ITR/audit of the petitioner, though learned counsel for the petitioner sought to explain it by saying that the bank details discloses those transactions between the petitioner and Allbright Electricals Pvt. Ltd. Once it is admitted that heavy transaction has been made between the petitioner and Allbright Electricals Pvt. Ltd. and the same having not been disclosed in the return of income/audit, it is clear that the aforesaid transaction amounts to escaped income for the relevant assessment year. Therefore, in our opinion, admission of the petitioner himself makes out a case for reopening of the assessment under Section 148. Though the reasons which have been assigned by the Assessing Officer in the order impugned are brief in nature, it cannot be said that the order is non-speaking or mechanical in nature. Non-disclosure of heavy transaction by the petitioner with Allbright Electricals Pvt. Ltd., in the ITR/Audit and the same having been made a basis to reopen assessment by issuing notice under Section 148, cannot be termed as arbitrary, whimsical or perverse, so as to warrant interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

15. The decisions, which have been cited by the petitioner, are distinguishable on facts. Present is a case where party had accepted that certain transactions had escaped assessment. In case of serious dispute with regard to the information or transaction having escaped assessment, non-affording of opportunity of hearing or non-supplying documents, was held to be unfair, arbitrary and unsustainable in law and relief was





provided. The judgments cited at the bar by the petitioner are, therefore, distinguishable on facts.

16. A Division Bench of this Court in the case of M/s Chetak Enterprises Ltd.(supra) (in which one of us, M.M. Shrivastava, J. was a party), while dealing with almost a similar issue on somewhat similar factual background, noted legal position as enumerated in various decisions of the Hon'ble Supreme Court, this Court and other High Courts.

"12. In '**Rasulji Buxji Kathawala vs. Income Tax Commissioner, Delhi and another**' (Civil Writ No.44 of 1955, dated 2.4.1956) while dealing with the similar situation under the 1922 Act, Division Bench of this Court held that-

"But where as in this case no part of the Act is being attacked, there is, in our opinion, no justification for us to intervene at this stage when other remedies which arc not necessarily onerous are still open to the applicant under the Act. We, therefore, refuse to intervene at this stage in this case, and leave it to the applicant to pursue his remedies under the Income-tax Act so far as the question of his charge-ability to income-tax under the Act, or other matters are concerned."

13. While dealing with the similar situation under the old Act i.e. Indian Income Tax Act, 1922, Division Bench of the Punjab and Haryana High Court in '**Lachhman Das Nayar and others vs. Hans Raj Puri, Income-Tax Officer, Amritsar and others,1953 AIR (P&H) 55**, held that-

"An examination of the scheme of the Act and the words used in section 34 of the Act and the various cases that I have referred to above show that the legislature has entrusted the determination of facts and of law to the Income-tax Officers. A particular machinery has been set up under the Act "by the use of which alone" total assessable income for the purposes of the Income-tax is to be ascertained and jurisdiction to question the assessment otherwise than by the use of this machinery is incompatible with the scheme of the Act. The challenge of the action of the Income-Tax Officer by a writ



prohibition or mandamus is, therefore, not available to the assessee."

14. The Division Bench of the Punjab and Haryana High Court in the case of '**Sumit Passi vs. Assistant Commissioner of Income-Tax**', (2016) 386 ITR, held that-

"29.... The reasons assigned by the Assessing Officer to tentatively believe that taxable income has escaped assessment cannot be brushed aside at the threshold without a fact finding procedure, more so when the petitioners are not remediless and have got equally efficacious recourses under the Act.

30. A somewhat similar dictum is discernible from CIT v. Chhabil Dass Agarwal [2014] 1 SCC 603 as it holds that the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income-tax (Appeals).

31. Having held so, it is not expedient for this Court to express its opinion on the rival submissions as it may unwittingly cause prejudice to either party. Suffice it to say that no case to quash the notice(s) issued under section 148 read with Section 147 of the Act or the order(s) rejecting the objections, is made out at this premature stage."

15. The Delhi High Court in **W.P.(C) 5787/2022** titled as **Gulmuhar Silk Pvt. Ltd. vs. Income Tax Officer Ward10(3) Delhi**, while considering the same question held that:

"6. Though it is the petitioner's case that the impugned order is erroneous on facts, yet this Court is of the opinion that the petitioner would have ample opportunity during the course of proceedings before different statutory forums to show that the finding of fact arrived at was erroneous. Moreover, at this stage, no assessment order has been passed and it has only been observed that it is a fit case for issuance of notice under Section 148 of the Act. Infact, the Supreme Court in Commissioner of Income Tax and Ors. Vs. Chhabil Das Agarwal, (2014) 1 SCC603 has held that as the Income Tax Act, 1961 provides complete machinery for assessment/reassessment of tax, assessee is not





permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226."

16. Recently, a Division Bench of this Court in the case of **Laxmi Meena vs. Union of India & Ors. [D.B. Civil Writ Petition No.447/2023, decided on 15.02.2023]** held that in the matter of challenge to order passed under Section 148A of the Act followed by issuing notice under Section 148 of the Act, the petitioner had not alleged any procedural impropriety, irregularity or violation of statutory provisions in the matter of initiation of proceedings or passing of any order under Section 148A(d) of the Act. The Division Bench relied upon the order passed by the High Court of Punjab and Haryana in the case of **Anshul Jain vs. Principal Commissioner of Income Tax [CWPNo.10219/2022, decided on 02.06.2022]**. It was held as under:

"8. Thus, the consistent view is that where the proceedings have not even been concluded by the statutory authority, the writ Court should not interfere at such a pre-mature stage. Moreover it is not a case where from bare reading of notice it can be axiomatically held that the authority has clutched upon the jurisdiction not vested in it. The correctness of order under Section 148A(d) is being challenged on the factual premise contending that jurisdiction though vested has been wrongly exercised. By now it is well settled that there is vexed distinction between jurisdictional error and error of law/fact within jurisdiction. For rectification of errors statutory remedy has been provided."

17. The SLP preferred against the order passed in the case of Anshul Jain (supra), was dismissed by Hon'ble Supreme Court vide order dated 02.09.2022 which reads as under:

"1. What is challenged before the High Court was there-opening notice under Section 148A(d) of the Income Tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

2. Under the circumstances, the High Court has rightly dismissed the writ petition.

3. No interference of this Court is called for.

4. The present Special Leave Petition stands dismissed.

5. Pending applications stand disposed of."

18. The Division Bench taking into consideration the settled legal position, dismissed the petition giving liberty to the writ petitioner to avail the remedy in the





proceedings subsequent to notice under Section 148 of the Act.”

17. In view of the above detailed consideration, in our opinion, no case is made out for interference at this stage.

18. We may, however, hasten to add here that we have not commented on the merits of the assessment. All the submissions which have been made by the petitioner before this Court to submit that transacted amount of Rs.65,00,000/- is not taxable in nature, would be open to be raised by the petitioner at the appropriate stage in the reassessment proceedings. The Assessing Officer, in the reassessment proceedings, shall be duty bound to deal with all those submissions which have been made before us with regard to the nature of transactions involving Rs.65,00,000/- between the petitioner and Allbright Electricals Pvt. Ltd. Furthermore, the documents, if needed by the petitioner, shall have also to be supplied to him so that he gets full opportunity to satisfy the Assessing Officer as to why addition of income should not be made.

19. With the aforesaid observations, the writ petition is disposed off.

(MUNNURI LAXMAN),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

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