

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10184 OF 2022

Anurag Gupta

Age 28 years,

Flat No.103-C2,

Mansarour Varala Devi Tal,

Bhiwandi, Thane-421 302.

PAN : BGXPG6557J

... Petitioner

Versus

1. Income Tax Officer, Ward (1)

Mohan Plaza, Wayle Nagar,

Khadak Plaza, Kalyan (West),

Kalyan-421 301.

2. Principal Commissioner of

Income Tax, Thane-1

having his office at:

Mohan Plaza, Wayle Nagar,

Khadak Plaza, Kalyan (West),

Kalyan-421 301.

3. Union of India

through its Finance Secretary

Department of Revenue

Ministry of Finance, 3rd Floor,

Jeevan Deep Building,

Sansad Marg, New Delhi-100 001

... Respondents

* * *

Mr. Sham Walve a/w Mr. Abhishek Khandelwal for the Petitioner.

Mr. Ajeet Manwani a/w Ms. Samiksha Kanani for the Respondents.

* * *

**CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, J.J.**

PRONOUNCED ON : 13th MARCH 2023

: J U D G M E N T :

Per DHIRAJ SINGH THAKUR, J.

. The Petitioner challenges the notice under Section 148 of the Income Tax Act, 1961 (“the Act”) dated 26 March 2022 and notice dated 08th March 2022 under Section 148A(b) of the Act as also the Order passed in terms of Section 148A(d) of the Act.

2 Briefly stated the material facts are as under :

The Petitioner filed his return as an individual for the assessment year 2018-19 under Section 139(1) of the Act. The return was processed under Section 143(1).

3 Subsequently, a notice under Section 148A(b) of the Act dated 8 March 2022 was issued by Respondent No.1 suggesting that income liable to tax for the assessment year 2018-19 had escaped assessment and called upon the Petitioner to show cause as to why notice under Section 148 be not issued. The basis for reopening was the information, which reads as under :

“1. In your case information has been received from the credible sources that a Search/Survey Action u/s

132 of the I.T. Act was carried out on 14.02.2019 on Antariksh Group. It is seen that you have purchased warehouse from BGR Construction LLP of Rs.70,00,000/- as per sale list seized impounded during the course of search. This amount includes sale consideration of land and construction cost and the on-money received by BGR Construction LLP. As per the information, it is observed that the payments made to M/s BGR Construction LLP are not accounted for in its regular books of accounts. The Cash payment on account of on-money of Rs. 70,00,000/- was not accounted in its books of account which is evident and the same is received in cash by the M/s BGR Construction LLP. Thus, the source of cash paid by you of Rs.70,00,000/- to BGR remains unexplained.

2. As the above information has been received from the credible sources, and this office is contemplating proceedings u/s 148 of the Income Tax Act, 1961 in your case, you are required to submit your explanation alongwith appropriate documentary evidences and reconcile the above information with the ITR filed by you, if any. In case, no ITR has been filed by you, you may submit the reconciliation of the above information with your book of accounts or computation of total income. Also, this may be treated as show cause notice u/s 148A(b) of the Income Tax Act, 1961 and final opportunity to submit the details. In absence of any submission or details from your side with respect to the above, it shall be presumed that you nothing to say in the matter and the same will be dealt as per the provisions of the Income Tax Act, 1961.”

4 This show cause notice was replied by a communication dated 14 March 2022, wherein the Petitioner totally denied that there was any transaction with BGR Construction LLP and that no warehouse had been booked or payment made to the said entity. The Petitioner also denied any ‘on-money cash transaction’ with the

said entity and therefore, demanded that the proceedings initiated under Section 147 of the Act be dropped.

5 On 21 March 2022, the assessing officer issued a clarification in regard to the notice under Section 148A(b), this time, stating therein that the Petitioner had also executed a conveyance deed with Meet Spaces LLP and, therefore, the assessing officer required the Petitioner to furnish payment details regarding this deed also.

No response was filed by the Petitioner to this communication dated 21 March 2022 and finally, the assessing officer passed the Order under Section 148A(d) on 25 March 2022, stated to be with the prior approval of the Principal Commissioner of Income Tax, Thane.

In the Order under Section 148A(d), for the purpose of issuance of the notice under Section 148 of the Act, the assessing officer proceeds to record its satisfaction, firstly, that cash payments had been made by the assessee to BGR Construction LLP as had been confirmed by the transferee of the said entity in the statement recorded during the survey action and, secondly, that the assessee had entered into a conveyance deed as a purchaser with Meet Spaces LLP for a consideration of Rs.10,00,000/-, which

remained unexplained.

6 Reply to the Petition has been filed, wherein a stand is taken that the procedure which was required to be followed in terms of Section 148A had been duly followed before issuing the notice in terms of Section 148 of the Act. It is also stated that the Petitioner even when had sufficient time to respond to the clarification letter dated 21 March 2022, did not file any response and that none of the principles of natural justice were violated in the case of the Petitioner. It was urged by Mr. Manwani, learned Counsel for the revenue that there was sufficient material with the assessing officer that the assessee had purchased a warehouse from BGR Construction LLP of Rs.70,00,000/-. That this fact was verified from the regular books of account of the said entity. That the name of the Petitioner had also figured in the said list of investors. It was, therefore, urged that the assessing officer was justified to reopen the assessment on the ground that income had escaped assessment based on the said material.

7 Heard learned Counsel for the parties.

8 The main ground of challenge as was urged by Mr. Walve,

learned Counsel for the Petitioner during the course of hearing can be summarized as under:

It was urged that the procedure as prescribed under Section 148A(b) of the Act as also the principles of natural justice had been violated, inasmuch as while the Petitioner was given the information in terms of Section 148A(b) of the Act, the material which ought to have been provided to the Petitioner was not so furnished, in the absence whereof the Petitioner was precluded from filing an effective reply to the show cause notice.

9. Mr. Manwani, learned Counsel for the revenue on the other hand stated that there was no such obligation cast upon the revenue in terms of Section 148A(b) of the Act to provide to the assessee anything beyond providing him the information.

10. Per contra, Mr. Walve, learned Counsel for the Petitioner drew our attention to the Apex Court judgment in the case of ***Union of India V/s. Ashish Agarwal***¹ and in particular paragraph 10 thereof which reads as under:

“10(i) The impugned section 148 notices issued to the respective assesseees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions before

1 [2022] 138 taxmann.com 64 (SC)

the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assessee information and material relied upon by the Revenue, so that the assessee can reply to the show-cause notices within two weeks thereafter;”

11. Mr. Walve, stated that in the present case the revenue had independently issued a notice to the Petitioner in terms of Section 148A(b) of the Act in accordance with the provisions of the Finance Act, 2021 and was not a case where notices issued under Section 148 under the old provisions were to be treated as notices issued under Section 148A(b) under the substituted provisions, which came into effect from 01st April 2021.

It was urged that the requirement of Section 148A(b) of the Act has clearly been spelt out in the direction *supra*, which envisages that not only information be provided to the Petitioner but also the material relied upon by the revenue for purposes of making it possible to file a reply to the show cause notice in terms of the said Section.

In the present case admittedly, no material had been supplied to the Petitioner, notwithstanding the fact that there was material available with the assessing officer as can be seen from the order

passed by the assessing officer under Section 148A(d) of the Act.

This was in the shape of a statement recorded, during survey action of the partner of BGR Construction LLP. There also appears to be a sale list, which was allegedly found during the search operations containing the names of 72 investors including the Petitioner which although referred to in the order under Section 148A(d) of the Act as also in the clarification communication dated 21st March 2022 was not provided to the Petitioner. Interestingly, while the communication dated 21st March, 2022, did say that the list of total sale “was being attached for the ready reference of the Petitioner for purposes of submitting a reply to the show cause notice, no such list was admittedly furnished”.

It goes without saying that providing information to the Petitioner, without furnishing the material based upon which the information is provided, would render an assessee handicapped in submitting an effective reply to the show cause notice, thereby rendering the purpose and spirit of Section 148A(b) of the Act totally illusive and ephemeral. The fact that the material also was required to be supplied can very well be gauged from the clear directions issued by the Supreme Court in the case of *Union of India*

V/s. Ashish Agarwal .

12. Two other arguments were raised by Mr. Walve during the course of argument, pertaining to the failure on the part of the assessing officer to obtain the prior approval from the specified authority before issuing the clarification communication dated 21st March 2022, as also the fact that the assessing officer ought to have first conducted an inquiry in terms of Section 148A(a) of the Act. However, we do not deem it absolutely necessary to deal with these issues in the present petition.

Be that as it may, we hold that the reassessment proceedings initiated are unsustainable on the the ground of violation of the procedure prescribed under Section 148A(b) of the Act on account of failure of the assessing officer to provide the requisite material which ought to have been supplied alongwith the information in terms of the said section.

13. In view of the above, the petition is allowed. The order impugned dated 25 March, 2022 passed under Section 148A(d) of the Act, the notice impugned dated 26 March, 2022 under Section 148 of the Act are hereby quashed. It would be however open to the revenue to proceed in the matter from the stage of the notice

under Section 148A(b) of the Act by supplying the relevant material, if it is otherwise permissible keeping in view the issue of limitation.

14. The writ petition is disposed of accordingly.

(VALMIKI SA MENEZES, J.) (DHIRAJ SINGH THAKUR, J.)