

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

RESERVED ON: 10.01.2024
DELIVERED ON: 17.01.2024

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNAM
AND
THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA**

**A.P.O. NO. 124 OF 2023
(IA NO: GA/1/2023)**

**CHAMPA IMPEX PRIVATE LIMITED
VERSUS
UNION OF INDIA AND OTHERS**

Appearance:-

**Mr. Pranit Bag, Adv.
Mr. Anujit Mookherjee, Adv.
Mr. Prithish Chandra, Adv.**

....for the Appellant.

**Mr. Vipul Kundalia, Sr. Adv.
Mr. Anurag Roy, Adv.**

.....for the Respondents.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This intra court appeal by the writ petitioner is directed against the order dated 19.07.2023 in WPO No. 1294 of 2023. The said writ petition was filed by the appellant challenging an order passed under Section 148A(d) of the Income Tax Act, 1961 (the Act for brevity).
2. As could be seen from the grounds canvassed in the writ petition as well as from the submissions made by Mr. Pranit Bag, learned advocate appearing for the appellant writ petitioner, the case of the appellant is that the respondent assessing authority had failed to consider that information for several assessment years cannot be called for as has been done in the notice issued under Section 148A(b) of the Act dated 31.03.2023. It is further submitted that no information could be sought for separately for the assessment year 2018-2019 since the appeal is pending before the appellate authority and the re-assessment proceedings in relation to the said year has been challenged by the appellant before this court and by order dated 15.03.2022, the matter stood remanded back to the assessing officer.
3. It is further submitted that the notice dated 31.03.2023 issued under Section 148A(b) of the Act cannot be modified or amended by a subsequent communication and the only option available was to drop the proceedings and issue fresh notice if the same is permissible under law. Further it is contended that the respondent assessing officer did not conduct any independent investigation or enquiry under Section 148A(a) of the Act before initiating proceedings by issuance of a notice under Section 148A(b) of the

Act. Further it is contended that the re-assessment proceeding is time barred and cannot be carried on against the appellant.

4. Mr. Vipul Kundalia, learned senior standing counsel appearing for the respondent on the other hand would contend that the notice issued under Section 148A(b) of the Act was pertaining to the assessment year 2016-2017 as is evident from the notice and the assessing officer has not called for information for multiple assessment years as alleged by the appellant. It is further submitted that after the receipt of the notice, the assessee had sent their objection/interim reply dated 20.04.2023 for which an appropriate reply was given by the assessing officer by email dated 20.04.2023 clearly mentioning that the information sought for was in respect of cash deposits during the financial year 2015-2016 pertaining to the assessment year 2016-2017. In spite of such clarification, the assessee submitted further objection on 29.04.2023 which was considered by the assessing officer and an order under Section 148A(d) of the Act was passed on 07.05.2023 which was impugned in the writ petition. The learned Single Bench after noting the facts clearly held that notice for commencement of re-assessment was not issued for multiple years and the case as projected by the appellant is baseless and frivolous and rightly dismissed the writ petition. It is further submitted that the appellant will have adequate opportunity in the re-assessment proceedings in which it will be well open to the appellant to place all documents in support of their contention and face the re-assessment proceedings. With the above submissions, the learned counsel prayed for dismissal of this appeal.

5. We have heard Mr. Pranit Bag, learned advocate appearing for the appellant and Mr. Vipul Kundalia, learned senior standing counsel appearing for the respondent.
6. The assessing officer issued notice under Section 148A(b) of the Act dated 31.03.2023. The notice mentions the assessment year as 2016-2017. The main ground of suspicion based on which such notice was issued pertain to high value cash deposit during the demonetization period from March 2016 to March 2017 in two bank accounts where the total credit and debit turnover was Rs. 87.69 crores and Rs. 85.86 crores out of which cash deposit of Rs. 20.51 crores and RTGS debit was Rs. 61.65 crores. The annexure to the said notice further states that summons under Section 131 of the Act was issued to the Branch Managers of the concerned banks for furnishing the bank account statements of the relevant bank accounts for the relevant financial year and KYC details. Summons under Section 131 of the Act was also issued to the assessee on 04.02.2023 with a request to furnish certain documents and information in order to examine the nature of transaction which in the opinion of the assessing officer was suspicious. It is further stated that in response to the said summons, the assessee had neither appeared nor had made any submission. It is further stated that the assessee which was a company incorporated during 2007 had an authorized share capital of Rs. 5,000,000/- and its paid-up capital was Rs. 11,22,000/- . The bank account statements in two bank accounts maintained with Standard Chartered Bank Limited, Kolkata were perused and the transactions were analyzed and on such analysis, it was found that the assessee has made huge cash deposits in different financial years. The

details of such deposits for the financial years 2016-2017, 2017-2018 and 2018-2019 were furnished in a tabulated form. Further it has been stated that as per the return of income filed by the assessee it is seen that the assessee had shown meager and/or negative profit before tax in comparison to turnover in its income tax return. Therefore, the assessing officer opined that the financials shown in the return of income are not commensurate with the cash deposits made in the said bank accounts. Further it is stated that the assessee is the real beneficiary and the deposits made in the bank accounts of the assessee by way of cash remained unexplained and therefore an inference was drawn that the assessee had not shown the true picture of their business affairs and suppressed/concealed the income/receipts. The assessee was required to provide all information as available on record namely the list of all bank accounts maintained during the assessment year 2016-2017; bank statement of all bank accounts maintained during the assessment year 2016-2017. The cashbook and bankbook from 01.04.2015 to 31.03.2016, the assessee was called upon to provide documentary evidence establishing identity, credit worthiness, and genuineness of the entities advancing loan and also provide the source of funds of the entities who had advanced loan to the assessee. The assessee was further directed to provide details of their fixed assets for the relevant financial year, names and details of promoters/directors of the assessee for the said period and in which other companies they were holding same position during the said period.

7. In the light of the above information furnished, the assessee was requested to show cause as to why adverse inference should not be drawn in

their case and also to explain why a notice under Section 148 of the Act should not be issued taking into consideration the facts. The assessee submitted a reply dated 20.04.2023 stating that the same is in the nature of a preliminary objection to the maintainability of the re-assessment proceedings and the jurisdiction of the assessing officer to issue the notice under Section 148A(b) of the Act.

8. The first objection raised by the assessee was that the re-assessment proceedings has been sought to be initiated pursuant to information received against the assessee without any verification thereof and that it pertained to three financial years and information relating thereto have been clubbed in the notice which has been issued being financial years 2016-2017, 2017-2018 and 2018-2019. It was further stated that an appeal against the assessment order dated 27.04.2021 for the financial year 2017-2018 has been preferred and the appeal is pending before the appellate authority. Further the re-assessment proceedings in relating to the said year has been challenged before this court and by order dated 15.03.2022, the Division Bench remanded the matter back to the assessing officer and the same issue is sought to be agitated through the notice issued under Section 148A(b) of the Act. Further it was submitted that a bare perusal of the notice makes it evident that though the notice calls for documents relating to various assessment years which is beyond the purview of law and admittedly notice for the assessment year 2016-2017 has been issued but documents in relation to the assessment years 2017-2018, 2018-2019 and 2019-2020 have been called for. The assessee sought a clarification as to what are the documents which the assessing officer seeks in relation to the

assessment year 2016-2017 since clubbing of various assessment years is not permissible under law. On receipt of such reply, the assessing officer by email dated 20.04.2023 addressed to the assessee informed its Director that they are required to submit the details of cash deposits made in a particular bank account in the name of the assessee during the financial year 2015-2016 relevant to the assessment year 2016-2017 and such reply should reach the assessing officer within 22nd April, 2023. The assessee by email dated 21.04.2023 sought for seven days time to provide a befitting reply to their email. The assessing officer by email dated 23.04.2023 informed the assessee that they are aware that the case is likely to be time barred and hence seven days cannot be given as they have been provided substantial time while issuing notice under Section 148A(b) however, the assessee chose to wait till the last date and considering the request three days time was given and the assessee was required to submit their reply by 25.04.2023. Once again by email dated 24.04.2023, the assessee sought for minimum ten days time. This request was considered and the assessing officer by email dated 25.04.2023 granted time till 30.04.2023. By email dated 29.04.2023, the assessee enclosed certain documents and also submitted a reply stating that the assessee has filed its return for the assessment year 2016-2017 on 13.10.2016 where they declared that the tax payable was Rs. 13,93,520/- and the return was acknowledged by the department.

9. Further it was stated that on perusal of the reasons for issuing the notice under Section 148A(b) of the Act, it is seen that it has been issued upon receipt of information from unknown sources and various allegations have been made against the assessee without conducting any independent

enquiry to support the initiation of the re-assessment proceedings. The assessee reiterated its earlier objection that the notice cannot be issued clubbing the three assessment years and therefore it is without jurisdiction. Further it was stated that by the reply given by the assessing officer by email dated 20.04.2023 the notice issued under Section 148A(b) of the Act cannot be modified and the same is not permissible under law. With the above submissions, the assessee prayed for dropping the proceedings.

10. The assessing officer proceeded to consider the objection raised by the assessee including the written submissions made on 29.04.2023 and noted the key points raised by the assessee therein. The assessing officer concluded that the assessee failed to produce any credible evidence to explain the source of cash deposits which had been pointed out in the notice issued and failed to substantiate the same with relevant entries in its books of accounts. The other contentions which were raised by the assessee were rejected and it was held that it is a fit case where notice under Section 148 of the Act has to be issued for the assessment year 2016-2017.

11. As could be seen from the notice issued under Section 148A(b) of the Act, the same pertains only to the assessment year 2016-2017 as has been mentioned in the tabulated form in page 1 of the notice. On carefully going through the information which was furnished to the assessee in the form of an annexure to the said notice, it is seen that the assessing officer sought to initiate re-assessment proceedings only for the assessment year 2016-2017. It is no doubt true that the information which was received by the department pertaining to the three financial years have been set out but nonetheless, the re-assessment proceedings which have been proposed to be

initiated pertained only to the assessment year 2016-2017. The assessee raised an objection in their reply dated 20.04.2023 stating that notice cannot be issued by clubbing three assessment years. On receipt of the reply, the assessing officer in no uncertain terms has clarified by email dated 20.04.2023 that they were required to submit the details of cash deposits made in a particular bank account in the name of the assessee during the financial year 2015-2016 relevant to the assessment year 2016-2017. The assessee would contend that the assessing officer sought to amend the notice dated 31.03.2023 by issuance of the email which is impermissible under law. The said contention raised by the assessee is devoid of any merits as the information which was furnished to the assessee though contained information pertaining to the three assessment years, the information called for in the notice dated 31.03.2023 pertained only to the assessment year 2016-2017. Thus, the email sent by the assessing officer dated 20.04.2023 cannot be construed to be an amendment of the notice dated 31.03.2023. Accordingly, such contention raised by the assessee is rejected.

12. In the preceding paragraphs, it has been noted that the assessee had repeatedly sought for adjournments which would show that the assessee attempted to drag the matter fully knowing well that the assessment will be time barred. The assessing officer was in fact reasonable and accommodated their requests for adjournment on two occasions and granted time till 30.04.2023. It is only after receiving the said information, the assessee sought to give a reply on merits on 29.04.2023 once again reiterating what had been stated earlier. The contentions raised by the assessee have been

considered by the assessing officer and a reasoned order has been passed recording all facts and dealing with all the objections raised by the assessee.

13. Mr. Bag contended that notice under Section 148A(b) of the Act could not have been issued without conducting an independent enquiry in terms of Clause (a) of Section 148 of the Act. Section 148A of the Act was inserted by Finance Act, 2021 with effect from 01.04.2023 deals with conducting inquiry providing opportunity before issue of notice under Section 148. It states that the assessing officer shall, before issuing any notice under Section 148A(a) conduct an inquiry, if required, with the prior approval of specified authority with respect to the information which suggests that income chargeable to tax as escaped assessment. Thus, the conduct of enquiry has not been made mandatory but discretion and has been vested with the assessing officer as the provision uses its expression "if required". In the event the assessing officer proposes to conduct an enquiry, or in other words if in the opinion of the assessing officer, an enquiry is required to be conducted, such enquiry can be conducted with the prior approval of the specified authority with respect to the information which suggests that the income chargeable to tax has escaped assessment. The assessing officer while dealing with this objection raised by the assessee has stated that the information was specific and therefore no enquiry under Section 148A(a) of the Act was deemed to be required. This finding rendered by the assessing officer cannot be stated to be erroneous for the court to interfere. Thus, the procedure under Clause (a) of Section 148A is not applicable to the case on hand. If such is the conclusion that is to be arrived at, then the assessing officer before issuing any notice under Section 148 of the Act, in terms of the

Clause (b) has to provide an opportunity of being heard to the assessee by serving upon him a notice to show cause within such time as may be specified in the notice which shall not be less than seven days but not exceeding thirty days, as to why a notice under Section 148 should not be issued on the basis of information which suggests that the income chargeable to tax has escaped assessment in their case for the relevant assessment year. The procedure required to be followed under Clause (b) of Section 148A has been followed by the assessing officer in the instant case. In terms of Clause (c) of Section 148A, the assessing officer has to consider the reply of the assessee in response to the notice issued under Clause (b). We find from the order dated 07.05.2023 passed under Section 148A(d) of the Act that the assessing officer has considered reply/replies furnished by the assessee in response to the notice issued under Clause (b). In terms of Clause (d), the assessing officer has to decide on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under Section 148 by passing an order with the prior approval of specified authority within the time framed. The stipulation under Clause (d) has been complied with by the assessing officer who has taken a decision, on the basis of the material available on record including the reply/replies given by the assessee and found that the case of the assessee for the assessment year under question namely 2016-2017 is a fit case to issue notice under Section 148 of the Act and prior approval of the specified authority has also been obtained. Thus, the provision of the Section 148A of the Act has been scrupulously followed by the assessing officer and there is no error in the decision-making process of this court to interfere.

14. Thus, for the above reasons, we find that the challenge to the order passed under Section 148A(d) of the Act has to necessarily fail.
15. In the result, the appeal is dismissed. However, there will be no order as to costs.
16. The appellant assessee is directed to participate in the re-assessment proceedings which shall be conducted by the assessing officer expeditiously without granting any adjournment to the assessee and endeavor to complete the same as expeditiously as possible. The assessee is directed to cooperate in the matter.

(T.S. SIVAGNAM, C.J.)

I Agree.

(SUPRATIM BHATTACHARYA, J.)

(P.A- SACHIN)