

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 2042 of 2023

M/s Chotanagpur Diocesson Trust Asson. Petitioner
 Versus

1. The Union of India, through the Secretary, Ministry of Finance, North Block, Central Secretariat, New Delhi.
 2. The Commissioner of Income Tax (Exemption), 2nd Floor, C.R. Building Birchand Patel Marg, Patna.
 3. The Income Tax Officer, Exemption Ward, Central Revenue Building, 5-A M.G. Road, Ranchi
-Respondents

CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. Rahul Lamba, Adv.
 Mr. Aditya Mohan Khandelwal, Adv.
 For the Res. Resp. : Mr. R.N. Sahay, Adv.
 Mr. Anurag Vijay, Adv.

CAV on :-03.08.2023

Pronounced on:-12/09/2023

Per Deepak Roshan, J.

The instant application has been preferred

for the following reliefs:-

- (i) For issuance of appropriate writ(s)/order(s)/direction(s) including a writ of certiorari for quashing/ setting aside the Order dated 22.03.2023 having Notice No. ITBA/AST/F/148A/2022-23/1051109075(1) passed by Respondent No.3 under Section 148A(d) of the Income Tax Act, 1961 for the Assessment Year 2019-20, as the same has been passed in violation to the provisions of the Income Tax Act, 1961 as well as the circular issued by the revenue department.
- (ii) For issuance of appropriate writ(s)/order(s)/direction(s) including a writ of certiorari for setting aside the Notice dated 22.03.2023 having Notice No.ITBA/AST/S/1481/2022-23/1051113394(1) issued by Respondent No.3 under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2019-20, as the same has been issued without complying with the mandatory pre-requisite conditions and in accordance with the provisions of Income Tax Act, 1961.
- (iii) For issuance of appropriate writ(s)/order(s)/direction(s) including a writ of certiorari for setting aside the notice dated 03.03.2023 having Notice No

- JTBA/AST/F/148A(SCN)/2022-23/1050362599(1)*
issued by Respondent No.3 under Section 148A(b) of
the Income Tax Act, 1961 for the Assessment Year
2019-20, as the same has been passed in gross
violation the provisions of the Income Tax Act, 1961.
- (iv) *Pending final adjudication and disposal of instant writ petition, your lordships may be pleased to stay the impugned notice issued under Section 148 of the Act, 1961 dated 22.03.2023 DIN & Notice No. ITBA/AST/S/148_1/2022-23/1051113394(1) issued by Respondent No.3.*
- (v) *For issuance of any other appropriate Writ(s), order(s), and/ or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case and in the interest of justice.*

2. The case of the petitioner is that it is a charitable cum religious trust registered with Registrar of Companies under Section 8 under the Companies Act, 2013 and also registered under Section 12A of the Income Tax Act, 1961 (hereinafter to be referred as the Act) whose purpose is to provide benefit to entire members of diocese of Chotanagpur region and of whole of India, Management of Churches and other social welfare activities.

The petitioner company has been served with one notice dated 03.03.2023 under section 148A(b) of the Act, 1961 for the Financial Year 2019-20. Upon issuance of notice under section 148A(b) of the Act, the petitioner has duly responded and filed a detailed reply dated 13.03.2023, wherein at point no.2 the petitioner has specifically raised objection with respect to issuance of notice under section 148A(b) of the Act, 1961.

As per the petitioner, the respondent department without considering the objections raised, without examining the submission placed by the petitioner and without following the criteria provided in Section 148A of the Act, has passed the impugned Order dated 22.03.2023 bearing DIN & Notice No.

ITBA/AST/F/148A/2022- 23/1051109075(1) under section 148A(d) of the Act, and also issued notice dated 03.03.2023 under Section 148 of the Act, 1961.

3. Mr. Rahul Lamba, learned counsel for the petitioner submits that the impugned Show Cause Notice (hereinafter referred to as "SCN") dated 03.03.2023 has been issued in utter violation to the provisions of Section 148A of the Act, 1961, inasmuch as, the SCN has been issued without providing details of information/enquiry conducted on which reliance is being placed, along with supporting documents as allegedly enclosed with the impugned SCN. Though the SCN contains three pages; however, no enclosure is attached which can provide details of the information/enquiry conducted on which reliance is being placed, along with supporting documents.

It has been further stated that Section 148A(a) of the Act, 1961 deals with conduct of enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment. He contended that conducting of an enquiry is not a necessary condition for issuance of Notice under Section 148A(b) of the Act, 1961; however, if the respondent department conducts an enquiry, which is evident from the Impugned Order dated 22.03.2023; then, it is mandatory for the respondent department to provide the report of the enquiry. However, the respondent department has failed to provide the copy of the report of the enquiry conducted. In other words, once enquiry has been conducted, then it shall be mandatory for the respondent department to provide the report of the

enquiry conducted as per the provisions of Section 148A of the Act, 1961.

He further contended that though the petitioner replied to the notice dated 13.03.2023 but the reply was not taken into consideration as such since the action of the respondent in passing the impugned order is against the settled procedure and thus, the same deserves to be quashed and set aside.

4. Mr. R. N. Sahay, learned counsel for the respondents submits that the Petitioner's objections stated as above were disposed of by the Assessing Officer u/s 148A (d) of the Act dated 22.03.2023 by passing a reasoned order (Annexure-3 of the writ petition) wherein it was held by the AO that the Assessee has indulged in real estate activities and thus, it is a fit case where notice u/s 148 of the Act was required to be issued and thereafter, Notice u/s 148 of the Act was issued to the petitioner on 22.03.2023 (Annexure-4 of the writ petition) and the trust was asked to file returns of income for the A.Y 2019-20 within 30 days from the service of the notice.

It is not correct on the part of the Petitioner to state that the Order u/s 148A (b) and u/s 148A (d) of the Act have been passed in violation to the provisions of the Income Tax Act, 1961 and the circulars issued by the CBDT.

He further submits that Show-cause Notice u/s. 148A(b) of the Act dated 03.03.2023 was issued on the basis of the information categorized as High Risk CRIU/VRU information on the insight portal of the Income Tax Department, uploaded by the DDIT(Inv.), Unit-I, Ranchi, that the Petitioner Trust was involved in

the sale and purchase of immovable property. The gist of that categorized information was provided to the petitioner in Annexure to the Notice u/s 148A (b) of the Act. Thus, it is incorrect to say on the part of the petitioner that there was no information available on record at the time of issue of Notice u/s 148A (b) of the Act and the copy of that information was not provided to him.

Further, while framing the order u/s 148A(d) of the Act, it was noticed by the Assessing Officer that the Risk Management System (RMS) contains Form No.61A furnished u/s 285BA (1) of the Act by the Sub-Registrar, Registry Office, Kutchery Chowk, Sadar, Ranchi. The details furnished in Form No.61A show that the petitioner had sold its residential property worth Rs.51,70,125/- on 15/06/2018 vide transaction identification number 2018/2097 through its Secretary, Mr. Urbanus Minz, to one Shri Chandra Kant, S/o Shri Suresh Prasad having PAN - ATAPK3659C.

It is further submitted that no enquiry report was provided to the petitioner since no enquiry from the third party was ever conducted by the A.O. Whatever and whenever any information was posted in the RMS (Risk Management System) of the Income Tax Portal, the same was duly provided to the petitioner. The information furnished by the Sub-Registrar Ranchi in Form No-61A, though not mentioned in the Annexure to the Notice u/s 148A (b) of the Act, it was provided to the petitioner in the order passed u/s 148A(d) of the Act dated 22.03.2023. Notice u/s 148 of the Act was issued on 22.03.2023 and the Assessee was asked to file its Return of Income for the A.Y 2019-20 within 30 days. Thus, the

objection of the petitioner that information received from Sub-registrar, Ranchi regarding sale and purchase of property was not shared with the petitioner before the issue of notice u/s 148 of the Act is not correct.

Further, section 148A(d) of the Act requires the AO to decide a case on the basis of material available on record including reply of the Assessee. As such, the AO is not required to confine himself only to the underlying information based on which the case was selected by the CBDT but can rely upon all materials available on record. The object of issuing notice under Section 148A of the Act is limited to ascertainment of information which suggests that income has escaped assessment and issues such as sufficiency or otherwise of material justifying reopening of assessment adjudication on the correctness of information are ordinarily not warranted at this stage in exercise of extraordinary writ jurisdiction.

The limited enquiry contemplated at this stage is to ascertain existence of information which suggests that income has escaped assessment. The quantification of escapement of income is not needed under Section 149(1)(a) of the Act.

He further submits that the validity of the order under Section 148A(d) of the Income Tax Act, 1961 and the consequential notice under Section 148 of the Act was challenged before the Hon'ble Allahabad High Court in ***Deepak Kumar Yadav v. Principal Commissioner of Income Tax and Anr. 2023 Live Law (AB) 206*** on the ground whether the correctness of the information based on Assessee's defense can be determined in the assessment proceedings under Section 148 of the Act? The Allahabad High Court dismissed the writ petition on

the ground that the scope of enquiry under Section 148A(d) is only to the extent of availability or unavailability of information suggesting that income has escaped assessment.

Relying upon the aforesaid submissions, learned counsel for the Revenue submits that the instant writ application deserves to be quashed and set aside.

5. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein it transpires that the Respondent department has issued Notice u/s 148A(b) of the Act dated 03.03.2023 wherein, it has been stated that through RMS (Risk Management System), the department is in possession of information that your trust is mostly engaged in real estate business and most of its activities are related to real estate development which are not charitable or religious activity. Accordingly, the aforesaid notice asked the petitioner to submit certain documents/details.

In the aforesaid notice, it is specifically stated that *“whereas I have information which suggests that income chargeable to tax for the Assessment Year 2019-20 has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961. The details of the information/ enquiry conducted on which reliance is being placed, along with supporting documents, are enclosed with this notice.”*

However, interestingly, there were no enclosures with the said notice. Though this fact was pointed out through the reply dated 13.03.2023 filed by the petitioner; despite the said objection of the petitioner, no such required information or supporting documents were provided to the petitioner by the respondents.

6. At this stage it is relevant to state that the

notice issued under section 148A(b) of the Act, is in the nature of Show Cause Notice. The entire material and information relied upon by the Assessing Officer needs to be supplied to the Assessee along with the notice under Section 148A(b) of the Act. There must be some material, supporting allegation of escapement of income. A bald assertion about escapement of income is not sufficient to validate issuance of notice u/s 148A(b) of the Act. Therefore, wherever the respondent department receives information about a transaction of sale of immovable property, mere fact of sale of immovable property will not lead to inference that such transaction is of income character and that it was chargeable to tax. The respondent department is duty bound to put material after conducting enquiry into the transaction to conclude that the income has escaped assessment.

The legislature has brought epochal and milestone amendment in the provisions of Section 147 to 151 of the I.T Act, 1961 vide Finance Act, 2021, notably same are based on three significant ideals, which can be enumerated herein below:

- (i) There is ease of doing business;
- (ii) There is lesser number of cases being reopened.
- (iii) Aiming at lesser litigation which has also been enumerated and mentioned in the explanatory memorandum to Finance Bill, 2021 which reflects the legislative intent behind incorporating new section in the Act, 1961.

7. At this stage it is necessary to clarify that though conducting an enquiry is not a condition precedent for issuance of notice u/s 148A(b) of the I.T Act, 1961; however, if the respondent department

conducts an enquiry; then, it is mandatory for the respondent department to provide the report of the enquiry along with the Notice issued u/s 148A(b) of the I.T Act, 1961.

In the instant case, it is evident from Para-3 of the Impugned Order dated 22.03.2023 that the Respondent department has conducted an enquiry under Section 148A(a) of the I.T Act, 1961. The enquiry U/s.148A(a) in this case was proposed to the Commissioner of Income-tax (Exemption), Patna, by uploading in the ITBA system, vide office letter dated 03/03/2023. The concerned Commissioner approved the proposal through ITBA system. Thereafter, a letter was also written to the Dy. Director of Income-tax (Inv.), Unit-1, Ranchi vide letter dated, 14/03/2023 for seeking further details of transaction in the real estate/immovable property by the Assessee. The DDIT(Inv.), Unit-I, Ranchi has accordingly proposed reopening of the case for the assessment year 2019-20 vide his office letter dated, 15/03/2023.

8. Thus, by going through the aforesaid factual aspect, it appears that the Respondents had issued the Notice u/s 148A(b) of the I.T Act, 1961 in haste and without conducting any enquiry. The enquiry in the present case of the petitioner was conducted subsequent to the issuance of the said notice which may have provided an opportunity to the petitioner to give his explanation/ reply to the findings made in such enquiry, before passing of the Order u/s 148A(d) of the I.T Act or issuance of Notice u/s 148 of the I.T Act, 1961.

9. The Respondent department in its Counter Affidavit (Para-14, 15 and 19 of the Counter Affidavit)

has categorically denied that since there was no enquiry conducted from the third party in this case, the question of providing enquiry report does not arise. However, it is evident from the aforesaid paragraph No. 6 and from Para-3 of the Impugned Order dated 22.03.2023 that enquiry was conducted. However, no report of such enquiry was given to the petitioner. In this regard, reference may also be made to Para-32 of the Counter Affidavit which indicates that the Respondents did not have the required material information and supporting documents in its hand on basis of which the respondents had made its mind and decided to issue Notice u/s 148A(b) of the I.T Act, 1961. The Notice u/s 148A(b) of the I.T Act, 1961 was issued on the basis of fishing enquiry/information. The Respondents, after issuance of the Impugned Notice u/s 148A(b) of the I.T Act, 1961, had started gathering information and supporting documents; however, even after obtaining the information and supporting documents, they did not disclose such information and supporting documents with the petitioner. The Respondents were duty bound to provide all material information/enquiry conducted on which reliance is being placed along with supporting documents to the petitioner.

10. The very essence of Section 148A(b) of the I.T Act, 1961 is to provide opportunity to the petitioner. Without sharing/providing the information and supporting documents to the petitioner, the Respondents had clearly frustrated/violated the purpose of Section 148A(b) of the I.T Act, 1961 and further, restrained the petitioner to present his stand and submit his explanation in the best possible manner. Further, such

information for the first time has come into picture only through the Counter Affidavit (Para-32 of the Counter Affidavit) and was never made part of/relied upon by the Respondents in their Impugned Order also.

The Respondents in their Counter Affidavit (Para-19) has stated that the disclosure of source of information is not necessary for issue of Notice u/s 148A(b) of the I.T Act, 1961. However, the required information/enquiry conducted on which reliance is being placed along with supporting documents is mandatorily required to be provided to the petitioner as per the provisions of the Section 148A of the I.T Act, 1961.

11. It appears that the impugned Order dated 22.03.2023 has been passed on the basis of new piece of information which was never in the picture at the time of issuance of notice dated 03.03.2023 and has never been provided to the petitioner.

The Respondent department has passed the Impugned Order dated 22.03.2023 on the basis of piece of information which has allegedly come into picture after the issuance of Notice dated 03.03.2023, which is evident from the language of the Impugned Order dated 22.03.2023 itself, which has never been provided to the petitioner nor has been made part of Annexure to the Impugned Notice dated 03.03.2023.

The Respondents, in Para 2.2 of their Impugned Order dated 22.03.2023 has mentioned about a new piece of information, the relevant para is quoted hereinbelow as ready reference:

“There was also a new piece information in Insight Portal categorized as High Risk CRIU/VRU that the assessee has sold its residential property worth Rs.51,70,125/- on 15/06/2018

vide transaction identification number 2018/2097. The assessee has sold this property through its Secretary, Urbanus Minz to one Shri Chandra Kant, S/o Shri Suresh Prasad having PAN-ATAPK3659C. This information has been uploaded by the Sub-Registrar, Registry Office, Kutchery Chowk, Sadar Ranchi. As per information in the Insight Portal, the assessee has also reported total sales in GSTR-1 amounting to Rs.1,28,85,569/-."

As a matter of fact, the Impugned Order is substantially based upon this new piece of information which is further evident from Para-6 of the Impugned Order dated 22.03.2023 itself. Relevant part of Para-6 of the Impugned Order dated 22.03.2023 is quoted hereinbelow for ready reference:

"The new information uploaded on Insight Portal goes to substantiate that the assessee has undertaken sale/purchase of immovable property. Thus, refuting the stand taken by the assessee, on the basis of information gathered during this proceeding, I am of the considered opinion that this case is a fit case for issue of notice u/s 148."

Thus, it is evident that the impugned Order has been passed without providing the details uploaded on the Insight portal along with the information gathered from the investigation wing and new information uploaded on insight portal and without considering the objection raised by the petitioner in its reply dated 13.03.2023 as alleged to have been provided/considered by the respondent department.

12. At this stage, it is also necessary to mention that the respondent department has also issued a "Circular" for issuance of notice under section 148 of the Act, 1961 dated 01.08.2022. In *Point No. 2.1(vii)*, it has been stated that if the result of enquiry/information available suggests that the income chargeable to tax has escaped assessment, the AO shall provide an opportunity of being heard to the Assessee by issuing a show cause notice under section 148A(b) of the Act. The said notice shall provide between 7 to 30 days time to the Assessee

for submitting the reply. A template of show cause notice is enclosed at Annexure-A1 to the circular.

If we look at the Annexure-A1 to the circular, it depicts the format of notice under Section 148A(b) of the Act. It also contains guidelines for enclosures wherein it has been specifically mentioned that the Assessing Officer shall enclose copy of all the relevant information available on which reliance is being placed, along with supporting documents (if any). Details of enquiry conducted, if any, may be shared if reliance is being placed by the Assessing officer on it.

13. Recently, the Delhi High Court in the similar facts in the case of ***Best Buildwell Private Limited Vs. Income Tax Officer 2022, 141 taxmann.com 558 (Delhi)*** has held as under:-

“7. Having heard the counsel for parties, this Court is of the view that the impugned show cause notice as well as the impugned order under section 148A(d) of the Act are based on distinct and separate grounds.

8. The show cause notice primarily states that "it is seen that the Petitioner has made purchases from certain non-filers". However no details or any information of these entities was provided to the Petitioner. It is not understood as to how the Petitioner was to know which of the entities it dealt with were filers or non-filers!

9. Further, the impugned order states that a report was prepared against the Petitioner-company which concludes that the assessee had shown bogus purchases from bogus entities to suppress the profit of the company and reduce the tax liability during the years 2015-16 to 2020-21. However, no such report which forms the basis for the 'information' on which the assessment was proposed to be reopened had been provided to the Petitioner. In fact, there are no specific allegations in the show cause notice to which the Petitioner could file a reply.”

Further, the High Court of Bombay in the matter of ***Anurag Gupta vs. Income Tax officer & Ors. 2023 SCC Online Bom 601*** has held as under:-

“15. 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.

16. *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.*

17. *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".*

18. *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 Ashish Agarwal (supra)."*

14. Now coming to the judgment relied upon by the Revenue it appears that the question in the said case was whether the correctness of the information based on Assessee's defense can be determined in the assessment proceedings under Section 148 of the Act? The Allahabad High Court dismissed the writ petition on the ground that the scope of enquiry under Section 148A(d) is only to the extent of availability or unavailability of information suggesting that income has escaped assessment.

In the case at hand, the issue is not the correctness of the information based on Assessee's defense can be determined in the assessment proceedings under Section 148 of the Act; rather, in the instant case, supporting documents have not been provided to the Assessee i.e., without providing the details uploaded on the Insight portal along with the

information gathered from the investigation wing and new information uploaded on insight portal has not been provided. Thus, the judgment relied upon by the Revenue is no applicable in the facts and circumstances of this case.

15. Having regard to the aforesaid discussions and the legal position of law the impugned notices deserve to be quashed and set aside.

Consequently, the impugned order dated 22.03.2023 passed by Respondent No.3 under Section 148A(d) of the Income Tax Act, 1961 for the Assessment Year 2019-20 and also the subsequent Notice dated 22.03.2023 issued under Sec.148 of the Act, are hereby, quashed and set aside.

The matter is remitted back to the Respondent No.3 to supply all the relied upon documents on the basis of which the Notice under Section 148 A(b) has been issued and pass the order strictly in accordance with law as mandated in the provision itself and the circular cited herein above.

16. As a result, the instant application stands allowed. Pending I.A., if any, is also disposed of.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)