

Court No. - 39

Case :- WRIT TAX No. - 1482 of 2023

Petitioner :- Shri Durga Trading Co

Respondent :- Income Tax Officer And Another

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- Gaurav Mahajan

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Manjive Shukla,J.

1. Supplementary affidavit filed today, is taken on record.
2. Heard Shri Suyash Agarwal, learned counsel for the petitioner and Shri Manu Ghildyal, learned counsel for the Revenue.
3. Challenge has been raised to the reassessment proceedings initiated against the petitioner under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961') for the Assessment Year 2016-17, *vide* notice dated 19.04.2023.
4. Besides the issue of delay in filing the present petition, learned counsel for the Revenue has also objected, at present satisfaction to initiate reassessment proceedings has been reached on the strength of cogent material and evidence discovered during a survey proceeding against a third party i.e. M/s Bait-Al-Tamurat, Mumbai.
5. On the other hand, learned counsel for the petitioner vehemently urged that notice under Section 148A was issued on a solitary ground that the petitioner had made cash purchases from the above described seller at the value exceeding Rs. 20,000/-, totalling to Rs. 2,68,88,124/-. That expenditure was proposed to be disallowed under Section 40A(3) of the Act, 1961. The petitioner denied the

allegation and relied on audited balance sheet, tax audit report, income tax return, purchases ledger account, ledger account of M/s Bait-Al-Tamurat and bank statement. At the stage of rejecting that reply, by means of order passed under Section 148A(d) of the Act, 1961, a new ground of purchases having been made outside the books of accounts, has been raised.

6. Thus, it has been submitted, there is no cogent material to proceed against the petitioner. The allegation of purchases made outside the books of accounts before passing order under Section 148A(d), dated 19.04.2023, was never levelled at the stage of issuance of the first show cause notice.

7. Having heard learned counsel for the parties and having perused the record, in the first place, it may be noted, under the amended law, it is no longer, the obligation of the Assessing Authority to record a "reason to believe", before assuming jurisdiction to reassess an assessee. A bonafide satisfaction reached as to escapement of income made suffice the test of valid assumption of jurisdiction.

8. Seen in that light, specific allegation was made against the petitioner of having made cash purchases in excess of Rs. 20,000/-. The reply that was furnished by the petitioner dated 11.04.2023 (Annexure-4 to the writ petition) does not establish that either the purchases made by the petitioner from M/s Bait-Al-Tamurat during the financial year 2015-16 valued at Rs. 2,68,88,124/- were paid through banking channel or that no purchases were made by the petitioner from such seller.

9. What may have been the total quantum of purchases made by the petitioner from M/s Bait-Al-Tamurat and what part of it may

have been accounted against the payment made through banking channel may remain to be verified at the stage of reassessment.

10. For the purposes of assumption of jurisdiction, all that is required to be seen is, if the satisfaction is bonafide. To that end, there is no dispute that the authority had conducted a survey against M/s Bait-Al-Tamurat. In that information was revealed that cash purchases made by the petitioner were valued at Rs. 2,68,88,124/-. In absence of any objection as to existence of such information and there being no material available to reach further satisfaction that such payments were made through banking channel, all other pleas being raised by learned counsel for the petitioner may remain to be examined, on merits, in the face of reassessment proceedings that are still pending.

11. Leaving it open to the petitioner to raise such objections and making it obligatory on the revenue authorities to deal with them, on merits, by affording opportunity of hearing without being prejudiced by any observation made in this order, the writ petition stands **dismissed**.

Order Date :- 25.1.2024

SA

(Manjive Shukla, J.) (S.D. Singh, J.)