

Chief Justice's Court

Case :- WRIT TAX No. - 968 of 2023

Petitioner :- Vivek Saran Agarwal

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Sharad Tandon, Punit Khare, Shubham Tandon

Counsel for Respondent :- A.S.G.I., Gaurav Mahajan, Naveen Chandra Gupta

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

Heard Sri Sharad Tandon, learned counsel for the petitioner, Sri Gaurav Mahajan and Sri N. C. Gupta, learned counsel for the Revenue.

Challenge in this writ petition is to the impugned order dated 25.05.2023 passed by the Assessing Officer, Income Tax Department/Respondent No.4 under Section 147 read with Section 144-B of the Income Tax Act, 1961 whereby and whereby a sum of Rs.1,20,59,813/- has been assessed as annual income for the Assessment Year 2015-16 and a demand of Rs.73,12,082/- towards tax has been raised against the petitioner. A challenge to the consequential notice under Section 148 of the Income Tax Act, 1961 dated 26.07.2022 has also been laid.

It is the case of the petitioner that he electronically filed his return for the Assessment Year 2015-16 on 01.12.2015 declaring income of Rs.12,69,380/- The case of the petitioner was taken up for scrutiny under Section 143(3) of the Act and in the course of the assessment proceedings notices under Section 143(2) and 142(1) of the Act were issued. The petitioners filed his replied to the notices and after due examination of the same the income was fully assessed and accepted at returned income vide assessment order dated 18.01.2017. It is further contended that the Income Tax Act, 1961 was amended vide the Finance Act, 2021 w.e.f. 01.04.2021 and the provisions of reassessment i.e. Sections 147, 148, 149, 151, 151A etc. were amended and Section 148A was inserted as a pre-requisite for the notice of the Act (unamended). Meanwhile, such notices under Section 148 of the Act (Unamended) were put to challenge before various High Courts and such notices were quashed. However, the Apex Court in the case of *Union of India Vs. Ashish Agarwal* reported in **2022 (444)**

ITRI vide its judgment dated 04.05.222 inter-alia held the notices issued under the unamended Section 148 of the Act shall be deemed to have been issued under Section 148A of the Act. The Respondent No.3 in compliance of the decision of the Apex Court dated 04.05.2022 issued notices on 24.05.2022 and 12.07.2022 with reference to Section 148A(b). The petitioner filed detailed reply on 03.06.2022 and 17.07.2022. The Assessing Officer/Respondent No.3 passed the order dated 25.05.2022 under 148A(d) and in consequence thereof the notice dated 22.07.2022 under Section 148 of the Income Tax Act.

The petitioner in response to the notice under Section 148 filed the return of income on 20.08.2022 declaring total income of Rs.12,69,380/- Thereafter, the Respondent No.4 issued the intimation to the assessee for completion of the assessment under Section 144-B and Respondent No.4 has issued various notices under Section 142(1) of the Act lastly on 10.04.2023 which were duly replied by the petitioner annexing all the documents i.e. copy of assessment order under Section 143(1) contract note of purchase and sale. The Respondent No.4 in continuation of the proceedings issued show cause notice dated 07.05.2023 to show cause as to why proposed variation should not be made which notice was duly replied by the petitioner vide reply dated 12.05.2023. The Respondent No.4 thereafter has passed the impugned order dated 25.05.2023 under Section 147 read with Section 144-B of the Income Tax Act, 1961. The notice of demand has been issued accordingly.

On the strength of the above facts, learned counsel for the petitioner has argued that the case of the petitioner is squarely covered by the first proviso to Section 147 of the Act as it stood prior to the amendment by the Finance Act, 2021 which provides that where assessment has already been completed under Section 143(3) of the Act, no reassessment proceedings can be initiated after the expiry of four years from the relevant Assessment Year 2015-16 i.e. 31.03.2020 unless the income has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. In the absence of any such allegation against the petitioner the reassessment proceedings are wholly unwarranted.

It is next contended on behalf of the writ petitioner that no change of opinion and review of already concluded assessment is allowed within the mandate of reassessment proceedings. Reliance has been placed upon the case of **Commissioner of Income Tax, Delhi Vs. Kelvinator of India Ltd.**, reported in **2010 (2) SCC 723** and

upon the case of ***Awlish Kumar Singh Vs. Union of India*** reported in **(2022) 139 taxmann.com 502 (Allahabad)**. It is also argued that the impugned orders are completely without jurisdiction and against the authority of law inasmuch as the ingredients of clause (b) of Section 149(1) are not complied with by the Respondent No.3 and there is no basis to hold that the income chargeable to tax has escaped assessment.

Sri Gaurav Mahajan and Sri N. C. Gupta, learned counsels for the Revenue in opposition to the writ petition submit that the objections filed by the petitioner/assessee have been duly considered and the assessing authority has found that it is a fit case to issue notice under Section 148 of the Act. Attention of the Court is invited to the observations made by the Assessing Officer in the impugned order dated 25.05.2023 in the following terms:-

4.5 Point-wise rebuttal of reply of the assessed including analysis of any case law relied upon.

The reply of the assessee has been duly considered but not found satisfactory as the case of the assessee has been reopened under Section 147 of the Act on the basis of incriminating documents found and seized during the course of search and survey operations in the case of Tradenext Securities Limited (Erstwhile Lifeline Securities Limited) along with one beneficiary of long term capital gains exempt u/s 10(38), Kundu Group of Rohtak on 25.02.2021

On the analysis of incriminating documents found and seized during the search operation, it is noticed that the assessee is also one of the beneficiaries.

4.6 Conclusion drawn

The search & seizure action was carried out in case of Trade next Securities Limited (Erstwhile Lifeline Securities Limited) along with one beneficiary of long-term capital gains exempt u/s 10938), Kundu Group of Rohtak on 25.02.2021. During the search and post search investigations, it was found that many persons including the assessee has taken long term capital gain (LTCG), exempt u/s 10(38) of the Act in the year under Consideration through investment in shares of HPC BIOSCIENCES LIMITED AND TVS MOTOR COMPANY LIMITED. It was observed that the assessee account of Mridul Securities Private Limited. During the course of investigation proceedings, it was noticed that the contract notes were fabricated and the shares were purchased through the stock market by entry operator controlled entity just before transfer to beneficiary and transferred to the account of the assessee beneficiary within a few days of purchase by way of off market transfer. The name of the assessee also appeared in the list of beneficiaries.

Accordingly, the case of the assessee was re-opened u/s 147 of the Act after giving an opportunity u/s 148A(b) of the Act and notice u/s 148 of the Act was issued on 26.07.2022.

In compliance to notice u/s 148 of the Act a return of income has been filed by the assessee on 20.08.2022 declaring an income of Rs.12,69,380/- Accordingly, notices u/s 143(2) and 142(10) of Income Tax Act, 1961 (hereinafter referred to as 'the Act') along with questionnaire/query have been issued.

Vide questionnaires u/s 142(1) of the Act dated 06.01.2023, the assessee was requested to file certain details including note on business activity, details of trading in stocks/securities transactions, loans, advances and deposits, secured-unsecured loan.

In compliance to said query, the assessee has filed his reply on 04.02.2023, 01.04.2023, 06.04.2023 and 13.04.2023, wherein the assessee mainly objected to the re-opening proceedings u/s 147 in his case. However, his objection to the re-opening was also disposed off by passing the speaking order u/s 148A which has again been duly disposed off vide order dated 29.03.2023 and 13.04.2023.

Since the assessee has failed to file the satisfactory reply in compliance to the notices issued, however, keeping in mind the principle of natural justice, show cause notice dated 07.05.2023 was issued with request to explain as to why an additions of Rs.1,05,78,856/- and Rs.2,11,577/- should not be made as per the provisions of section 69A and 69C of the Act respectively.

They further submit that the consideration at the stage of passing order under Section 148A(d) is limited to ascertainment of information with the assessing officer that income of assessee has escaped assessment to tax. Final determination on the question whether income of assessee has actually escaped assessment is then to be made after notice under Section 148, by passing an order of assessment or reassessment under Section 147 subject to the provisions of Section 148 to 153 of the Act. It is also argued that the petitioner is at liberty to raise all factual issues/objections at the appropriate stage of the proceedings and no prejudice is being caused to the petitioner. It is contended that this Court would not be justified in embarking upon the correctness or otherwise of the information available with the assessing Officer while taking decision under Section 148A(d) of the Act. Reliance has been placed upon a decision of a Coordinate Bench of this Court in ***Writ (Tax) No.561 of 2023 (Deepak Kumar Yadav Vs. Principal Commissioner of Income Tax and another)*** decided on 05.05.2023.

We have heard learned counsel for the parties and have given our anxious consideration to the rival submissions. We have also perused the records.

We find substance in the submissions of Sri Mahajan and Sri Gupta, learned counsel for the Revenue. The Assessing Officer has proceeded to pass an order on 25.05.2023 under Section 148A(d)

of the Income Tax Act, 1961 rejecting the objection of the petitioner to the show cause notice under Section 148A(b) of the Income Tax Act, 1961 on the ground that information exists to suggest that an addition of Rs.1,05,78,856/- and Rs.2,11,577/- should not be made as per the provisions of Section 69A and 69C respectively. The reply of the assessee has been considered but the same is not found to be satisfactory. The assessee has not offered his unaccounted unexplained income for taxation purpose in his return of income. It is precisely evident that this office has certain information which strongly suggests that the income chargeable to tax has escaped assessment for Assessment Year 2015-16. A consequential notice has also been issued to the petitioner under Section 148 of the Act.

The Income Tax Act, 1961 does not contemplate any detailed adjudication on the merits of information available with the Assessing Officer at the stage of passing order under section 148A(d) of the Act of 1961. In our considered view there is a specific purpose for not introducing any further enquiry or adjudication in the statute, on the correctness or otherwise of the information, at this stage. The reason for it is obvious. Under the scheme of the Act a detailed procedure has been provided under Section 148 for issuance of notice whereafter the assessing authority has to determine, in the manner specified, whether income has escaped assessment and the defence of assessee, on all permissible grounds, remains open to be pressed at such stage. The ultimate determination made by the assessing authority under Section 147 for reassessment is otherwise subject to appeal under Section 246-A of the Act. Merits of the information referable to Section 148A thus remains subject to the reassessment proceedings initiated vide notice under Section 148 of the Act. It is for this reason that issues which require determination at the stage of reassessment proceedings and in respect of which departmental remedy is otherwise available are not required to be determined at the stage of decision by the assessing authority under Section 149A(d). The scope of decision under Section 148A(d) is limited to the existence or otherwise of information which suggests that income chargeable to tax has escaped assessment.

Thus, in our opinion, the impugned order under Section 148A(d) of the Act and notice under Section 148 would not warrant any interference under Article 226 of the constitution of India as challenge to such order would be available to an assessee while challenging the order passed in reassessment proceedings consequent to the notice issued under Section 148 of the Act. The

Apex Court in the case of **Anshul Jain Vs. Principal Commissioner, Income Tax**, reported in (2022) 143 taxman.com 38 observed as under:-

"What is challenged before the High Court was the re-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.

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

No interference of this Court is called for.

The present Special Leave Petition stands dismissed."

In view of the above, we find no merit in the challenge laid to the order dated 25.05.2023 passed under Section 148A(d) of the Income Tax Act, 1961 as well as to the notice dated 26.07.2022 under Section 148 of the Act. The writ petition as framed fails and is **dismissed**. No order as to costs.

Order Date :- 3.10.2023

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(Ashutosh Srivastava, J) (Pritinker Diwaker, CJ)