

Court No. - 03

Case :- WRIT TAX No. - 641 of 2022

Petitioner :- Dharmendra Kumar Singh

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Rahul Agarwal, Ashok Kumar Singh

Counsel for Respondent :- A.S.G.I., Gaurav Mahajan, Krishna Agarawal, N.C. Gupta

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Jayant Banerji, J.

1. Heard Sri Rahul Agarwal, learned counsel for the petitioner and Sri Krishna Agarwal, learned counsel for the Income Tax Department.

2. This writ petition has been filed praying for the following relief:

"(a) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 31.03.2022 (Annexure-4 to the writ petition) passed by the assessing authority for the Assessment Year 2018-19 under Section 148A(d) against the petitioner as also the notice under Section 148 dated 31.03.2022 (Annexure 5 to the writ petition);"

3. On 20.05.2022, this Court passed the following order:

"1. Heard Shri Rahul Agarwal, learned counsel for the petitioner, Shri N.C. Gupta, learned Central Government Standing Counsel for the respondent no. 1 and Shri Krishna Agarwal, learned counsel for the respondent nos. 2 and 3.

2. This writ petition has been filed praying for the following relief:

"(a) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 31.3.2022 (Annexure-4 to the writ petition) passed by the assessing authority for the Assessment Year 2018-19 under Section 148A(d) against the petitioner as also the notice under Section 148 dated 31.03.2022 (Annexure 5 to the writ petition);"

3. The impugned notice dated 23.3.2022 under clause (b) of Section 148A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961') for the assessment year 2018-19 was issued by the respondent no. 3 to the petitioner on the basis of information available i.e. 'purchase of immovable property more than 20,00,000/-' and accordingly required the petitioner to explain the nature and source of above transaction along with documentary evidences. The petitioner filed a reply dated 30.3.2022 explaining that immovable property in question is a flat which was booked in the year 2012 and thereafter payments have been made year to year through account payee cheques. The entire details of payment were disclosed in the aforesaid reply and additionally a copy of the registered sale deed registered on 19.4.2017 in respect of the property in question, was also filed.

4. Despite the facts aforesaid, the respondent no. 3 has passed the impugned order dated 31.3.2022 under Clause (d) of Section 148A of the Act, 1961. Perusal of the impugned order shows that the respondent no. 3, prima facie, acted arbitrarily and illegally and recorded a finding that it is a fit case to issue notice under Section 148, whereas, the information with which the petitioner was confronted by him, was fully explained by the petitioner with documentary evidences. The respondent no. 3 passed the impugned order on totally extraneous grounds which were neither part of the show cause notice nor in respect of which the assessee was called upon to submit explanation.

*5. As per provisions of Section 148A of the Act, 1961, the Assessing Officer has been conferred power to conduct an enquiry before issuing any notice under Section 148, **with respect to the information which suggests that the income chargeable to tax has escaped assessment.** Clause (b) of Section 148A requires the Assessing Officer to afford an opportunity of hearing to the assessee by serving upon him a notice to show cause as to why a notice under Section 148 should not be issued on the basis of*

information which suggests that income chargeable to tax has escaped assessment. Clause (d) of Section 148A of the Act provides that on the basis of material available on record including reply of the assessee, the Assessing Authority shall decide as to whether or not it is a fit case to issue a notice under section 148.

6. Thus, **under Section 148A of the Act, 1961, enquiry is to be conducted by the Assessing Officer with respect to the information received by him, show cause notice is to be issued by him to the assessee on the basis of that information and the order under clause (d) is to be passed by him with reference to the information received.**

7. Under the circumstances, we direct the respondent nos. 2 and 3 to file counter affidavit by means of their personal affidavits within three days, failing which, the respondent no. 3 shall remain personally present and shall show cause as to why exemplary cost be not imposed.

8. Put up as a fresh case before the appropriate Bench on 25.5.2022.
9. As an interim measure, it is provided that till the next date fixed, proceedings pursuant to the notice under section 148 dated 31.3.2022 for the assessment year 2018-19 shall remain stayed.”

4. In compliance to the afore-quoted order dated 20.05.2022, a personal affidavit dated 23.05.2022 on behalf of respondent No.2 sworn by Abha Kala Chanda, PCIT, Allahabad has been filed which is taken on record. In paragraph-7 of the aforesaid personal affidavit, the respondent No.2 has stated, as under:

“7. That upon perusal of the record, reply of the petitioner and facts and circumstances of the case, the deponent is of opinion that the proceedings under section 148 needs to be dropped. However, there is stay on the proceedings by the Hon’ble Court, it could not be dropped as of now. Once the stay is vacated by the Hon’ble Court, proceedings will be dropped in the instant case.”

5. From the facts as mentioned in our order dated 20.05.2022 read with para-7 of the personal affidavit of the respondent No.2 afore-quoted, it is clear that the impugned order dated 31.03.2022 passed by the respondent No.3 was patently erroneous and grossly illegal, which also reflects abuse of power by the concerned officers.

6. Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes has issued **instructions/ Circular F.No.225/101/2021-ITA-II on 23.04.2022**, which was followed by a personal affidavit of the Revenue Secretary on behalf of Union of India stating in paragraph-10 of the affidavit as under:

*“10. It is further respectfully submitted that even though a large number of assessments were carried out efficiently and effectively, yet, recognising the difficulties faced by the tax payers, the Central Board of Direct Taxes issued instruction F. No. 225/101/2021-ITA-II, dt. 25/04/22, for dealing with taxpayers grievances. The local committee ascertains whether the additions made in the assessment order is not backed by any sound reasons or logic, provisions of law have been grossly misinterpreted or obvious and well-established facts on record have been ignored outrightly. **The said instruction also provides for initiation of suitable administrative action against the erring officer in case where assessments are found by the local committee to be high-pitched or where there is non-observance of principles of natural justice, non- application of mind or gross negligence of assessing officer/ Assessment Unit.** Also, the findings of the local committee are considered for revisiting SOP/policy on faceless assessment and addressing systems related issues.”*

7. In view of the aforesaid, prima facie, the impugned order dated 31.03.2022 under

Section 148A(d) passed by the respondent No.3 appears to attract the aforesaid circular and required action as per personal affidavit on behalf of the Union of India. Therefore, we direct the respondent No.1 to ensure that appropriate proceeding in accordance with law is initiated against the erring officers.

8. Considering the facts and circumstances of the case and the statement made by the respondent No.2 in paragraph-7 of the personal affidavit, the impugned order dated 31.03.2022 under Section 148A(d) of the Income Tax Act, 1961 for the Assessment Year 2018-19 passed by the respondent No.3 and the impugned notice under Section 148 dated 31.03.2022, are hereby quashed. **The writ petition is allowed.**

9. The action taken by the respondent No.1 in terms of the above referred instructions of the respondent No.1 dated 23.04.2022 read with paragraph-10 of the affidavit referred in our order dated 19.05.2022 passed in **Writ Tax No.465 of 2022 (Harish Chandra Bhati vs. Principal Commissioner Of Income Tax Noida And 2 Others)** shall be communicated to the petitioner by the respondent No.1 within four weeks. **A compliance report** shall also be submitted by the respondent No.1 before this Court within six weeks which **shall be placed before us on 12.07.2022 along with records of this writ petition.**

Order Date :- 25.05.2022

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