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**RADHA SOAMI SATSANG BEAS
VS
NATIONAL FACELESS ASSESSMENT CENTRE**

[TS-5818-HC-2022(PUNJAB & HARYANA)-O]

IN THE HIGH COURT OF PUNJAB & HARYANA

TEJINDER SINGH DHINDSA AND PANKAJ JAIN, JJ

CWP NO 17189/2022

**RADHA SOAMI SATSANG BEAS
VS
NATIONAL FACELESS ASSESSMENT CENTRE**

SECTION REFERRED

148, 148A, 148A(b)

SYNOPSIS BY EXPERTS

HC dismissing the writ petition challenging reassessment proceedings - Punjab & Haryana HC relied coordinate bench ruling in Gian Castings by holding that the writ court shall not interfere in the reassessment proceedings at a premature stage and also observed that SLP against which was dismissed by the Supreme Court; HC also observed, "Admittedly in the present case the procedure as contemplated of the 1961 Act was followed and the authority acted within jurisdiction though petitioner alleges that it erred as the petitioner claims that the order passed under section 148A(d) warrants interference owing to error of fact"

CASES REFERRED

Gian Castings Pvt Ltd vs CBDT [TS-5285-HC-2022(Punjab & Haryana)-O], Calcutta Discount Company vs ITO [TS-2-SC-1960-O], Jeans Knit (P) Ltd vs Dy CIT [TS-5229-SC-2016-O], Gian Castings Pvt. Ltd vs CBDT [TS-5039-SC-2022-O]

IN FAVOR OF

Revenue

DATED

05-08-2022

APPELLANT BY

Ekakshra Mahajan, Advocate

REVENUE

respondent

CASES RELIED ON

Gian Castings Pvt Ltd vs CBDT [TS-5285-HC-2022(Punjab & Haryana)-O],

JUDGMENT

Per, Pankaj Jain, J :-

1. The petitioner is a religious society assessed to income tax by way of present writ petition. The petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India for grant of writ in the nature of certiorari praying for quashing of the notice issued to the petitioner under Section 148 of the Income Tax Act, 1961 (for short 'the Act') dated 29.03.2022 (Annexure P-1).

2. As per the petitioner a notice was received under Section 148A(b) of the Act dated 15.3.2022 whereby it was claimed that the authorities have reason to believe that the income chargeable for tax for the year 2018-19 escaped assessment. The petitioner was asked to show cause as to why notice under Section 148 of the Act should not be issued. The details of the information and enquiry were also served upon the petitioner as Annexure to the notice issued under Section 148A(b). The petitioner submitted response to the same vide communication dated 19.3.2022 wherein factual as well as legal submissions were raised. However, the authorities on 29.3.2022 passed order under clause (d) of Section 148A of the 1961 Act rejecting the explanation offered by the petitioner and issued notice under Section 148 of the Act.

3. The petitioner under these circumstances invoked the writ jurisdiction of this Court seeking quashing of the notice issued under Section 148 of the Act. The challenge has been raised contending that the stand of the petitioner has not been taken into consideration. It has also been contended that the authorities erred in fact as well as in law, resulting in miscarriage of justice.

4. We have heard learned Counsel for the petitioner and have carefully gone through the records of the case.

5. The primary issue that would arise in the present writ petition is :-

“Whether at this stage of notice under Section 148, writ Court should venture into the merits of the controversy when AO is yet to frame assessment/reassessment in discharge of statutory duty casted upon him under Section 147 of the Act ?”

6. The aforesaid question already stands answered by this Court in [CWP No.9142 of 2022 decided vide order dated 2.6.2022] = [TS-5285-HC-2022(Punjab & Haryana)-O] titled as Gian Castings Pvt. Ltd. Vs. Central Board of Direct Taxes and others holding that :-

“12. Thus, the consistent view is that where the proceedings have not even been concluded by the statutory authority, the writ Court should not interfere at such a pre-mature stage. Moreover it is not a case where from bare reading of notice it can be axiomatically held that the authority has clutched upon the jurisdiction not vested in it. By now it is well settled that there is vexed distinction between jurisdictional error and error of law/fact within jurisdiction. For rectification of errors statutory remedy has been provided.

13. In the light of aforesaid settled proposition of law, we find that there is no reason to warrant interference by this Court in exercise of the jurisdiction under Article 226/227 of the Constitution of India at this intermediate stage when the proceedings initiated are yet to be concluded by a statutory authority. Hence, the instant writ petition stands dismissed.”

7. Needless to mention that the aforesaid order was challenged in [Special Leave to Appeal (C) No. 10762 of 2022] = [TS-5039-SC-2022-O] titled as 'Gian Castings Pvt. Ltd. Vs. Central Board of Direct Taxes and others', which was dismissed vide order dated 17.6.2022.

8. Faced with this situation, the petitioner has relied upon to the order passed in Civil Appeal No. 11189 of 2016 titled as Jeans Knit (P) Ltd. Vs. Deputy Commissioner of Income Tax and others reported as [(2017) 390 ITR 10 SC] = [TS-5229-SC-2016-O] to submit that the writ petition will be maintainable against notice issued under Section 148 of the Act. It needs to be noticed that in the case of Jeans Knit (supra), Supreme Court relied upon law laid down in Calcutta Discount Company vs. Income-Tax Officer, Companies reported as [(1961) 41 ITR 191 SC] = [TS-2-SC-1960-O]. In the case of Calcutta Discount Company (supra), it was held that:

“It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.”

9. Admittedly in the present case the procedure as contemplated of the 1961 Act was followed and the authority acted within jurisdiction though petitioner alleges that it erred as the petitioner claims that the order passed under section 148A(d) warrants interference owing to error of fact.

10. Keeping in view that aforesaid facts and the settled proposition of law, we find no reason to interfere at this stage.

11. As a sequel of the discussion made hereinabove, the present writ petition is dismissed. Nothing herein observed shall be construed as an opinion on the merits of the case.