



\$~53

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Decision delivered on: 02.06.2023**

+ **W.P.(C) 5135/2023 & CM APPL. 20059/2023 (Stay)**

RAJINDER NATH KAPOOR Petitioner

Through: Mr Satyen Sethi with Mr Artatrana
Panda, Advocates

versus

INCOME TAX OFFICER, WARD 47(1), & ANR.Respondent

Through: Mr Gaurav Gupta, Sr. Standing
Counsel

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

GIRISH KATHPALIA, J. (ORAL):

1. The petitioner has approached this court under Article 226 of the Constitution of India seeking quashing and/or setting aside of the notice dated 31.03.2023 passed under Section 148 of the Income Tax Act and order dated 31.03.2023 under Section 148A(d) of the Act pertaining to the Assessment Year 2016-17. The writ petition was contested on behalf of the respondents Income Tax Officer and Principal Chief Commissioner of Income Tax through counsel. We heard learned counsel for both sides.



2. Briefly stated, circumstances relevant for present purposes are as follows.

The present petitioner alongwith his father and brother constituted a partnership firm under the name and style M/s Kapoor Electric Mart by way of partnership deed dated 20.04.1982 and started business under PAN Card bearing No. AAAPK4540P. After death of their father, the petitioner and his brother executed fresh partnership deed and continued the business under the same PAN Card No. AAAPK4540P from 29.12.2003 to 31.03.2004. With effect from 01.04.2004, the firm M/s Kapoor Electric Mart was dissolved and business of the firm was taken over by the petitioner as a sole proprietor of M/s Kapoor Electric Mart. For the Assessment Years 1983-84 to 2004-05 the firm filed its returns of income under PAN bearing number AAAPK4540P. But thereafter, the petitioner has been carrying out the business of his sole proprietorship concern Kapoor Electric Mart under PAN Card No. AASPK4955A. The petitioner has been mainly engaged in import of electric goods from China and sale thereof in India.

The petitioner received first notice dated 22.02.2023 under Section 148A(b) of the Act addressed to the erstwhile partnership firm, alleging that no return of income for the Assessment Year 2016-17 had been filed though the firm had entered into a high value transaction by way of import of Rs.1,96,08,310/- (assessable value of Rs. 2,23,95,361/-) thereby the income chargeable to tax in the form of assets had escaped assessment. Thereafter, the petitioner received second notice dated 01.03.2023 under Section



148A(b) of the Act addressed to the erstwhile partnership firm alleging that in the notice dated 22.02.2023, the relevant provision of law was wrongly quoted as Section 149(1)(a) instead of Section 149(1)(b) of the Act.

Thereafter third notice, dated 05.03.2023 under Section 148A(b) of the Act was received by the petitioner, alleging that the erstwhile partnership firm had made imports of Rs. 1,42,12,689/- with assessable value of Rs.2,23,95,361/- during Financial Year 2015-16 but no return of income for the Assessment Year 2016-17 had been filed.

The petitioner as sole proprietor of Kapoor Electric Mart submitted detailed reply dated 11.03.2023, making reference to the above mentioned facts of conversion of the erstwhile partnership firm followed by business of the sole proprietorship concern under PAN AASPK4955A and also stating that the transactions referred to in the notices under Section 148A(b) of the Act were duly recorded in the books maintained by the petitioner. The petitioner also submitted the supporting documents, viz. copies of acknowledgement of return of income of Kapoor Electric Mart for Assessment Year 2016-17, balance sheet and profit & loss statement as on 31.03.2016 with Tax Audit Report, details of imports of Rs. 1,79,07,727/- made during Financial Year 2015-16, ledger of purchase at tax rate of 12.5% & 5% and quarterly VAT returns for the Financial Year 2015-16.

By way of yet another notice dated 27.03.2023, again addressed to the partnership firm, the petitioner was again called upon to furnish further details, so on 28.03.2023, petitioner submitted the ledger of purchases



(import) pertaining to the period 01.04.2015 to 31.03.2016, ledger of parties from whom imports were made, purchase invoices with supporting documents and bank statements.

Thereafter, by way of impugned order dated 31.03.2023 under Section 148A(d) of the Act, the concerned Income Tax Officer held that it was a fit case to issue notice under Section 148 of the Act for Assessment Year 2016-17. Consequently, the impugned notice dated 31.03.2023 under Section 148 of the Act was issued against the petitioner.

Hence the present petition.

3. On behalf of petitioner, it was argued that the impugned order under Section 148A(d) as well as the impugned notice under Section 148 of the Act are not sustainable in the eyes of law as the same were passed and issued in the name of non-extant entity, insofar as the same were issued to M/s Kapoor Electric Mart with PAN AAAPK4540P, the partnership firm which is no more in existence. Learned counsel for petitioner contended that petitioner had been admittedly filing returns of income as sole proprietor of Kapoor Electric Mart and that mention of PAN of the partnership firm in the bill of entry was a bonafide mistake insofar as petitioner had not concealed the purchases (imports) in the books of the proprietorship concern.

4. On the other hand, learned counsel for the respondents revenue submitted that the petitioner ought to have informed the dissolution of the



erstwhile partnership firm and it appears to be a case of deliberate concealment by the petitioner. However, it was not disputed that such an order and notice passed and issued against a non-entity cannot be enforced.

5. On the first date of hearing (24.04.2023), in response to a specific query as to whether the intimation about dissolution of the erstwhile partnership firm had been conveyed to the Assessing Officer, learned counsel for petitioner stated that the Income Tax Returns were being filed by the petitioner in his capacity as a proprietor of Kapoor Electric Mart. As such, petitioner was directed to place on record the relevant Income Tax Returns alongwith the balance sheet and profit & loss accounts as well as purchase orders and invoices qua the imports.

6. Accordingly, petitioner filed his additional affidavit dated 24.05.2023 alongwith the supporting documents. In his said additional affidavit, the petitioner testified the above mentioned facts. Petitioner also placed on record a number of supporting documents including invoices raised by the Chinese exporters on the petitioner. Petitioner also placed on record copies of his Income Tax Returns pertaining to the Assessment Years 2005-06 to 2015-16, filed under his PAN AASPK4955A. In view of the said additional affidavit, supported with a plethora of documents, it does not appear to be a case of deliberate concealment of facts. If the petitioner wanted to defraud revenue, he would not have declared the imports in books of accounts as proprietor of Kapoor Electric Mart.



7. In nutshell, the impugned order under Section 148A(d) and notice under Section 148 of the Act were passed and issued against a non-extant entity, as such the same cannot be complied with. Therefore, the impugned order under Section 148A(d) and notice under Section 148 of the Act both dated 31.03.2023 are set aside. The respondents would be at liberty to take further steps in accordance with law.

8. Accordingly the writ petition allowed. Pending application shall stand closed.

GIRISH KATHPALIA, J

RAJIV SHAKDHER, J

JUNE 2, 2023/as

[Click here to check corrigendum, if any](#)

सत्यमेव जयते