

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: November 29, 2018
CWP No.5872 of 2018 (O&M)

Raninder Singh

.....Petitioner

Versus

Commissioner of Income Tax, Patiala and another

....Respondents

CWP No.5873 of 2018 (O&M)

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Commissioner of Income Tax, Patiala and another

....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE H.S. MADAAN

Present: Ms. Rameeza Hakeem, Advocate and
Mr. Sehaj Bir Singh, Advocate for the petitioner.

Mr. Rajesh Katoch, Standing Counsel for the respondents.

A.B. CHAUDHARI, J

By these two writ petitions, the petitioner has sought quashing of assumption of jurisdiction under Section 148 of the Income Tax Act, 1961 (for short 'I.T. Act') dated 23.03.2016 for the assessment year 2006-2007 (**in CWP No.5813 of 2018**) and for the assessment year 2007-2008 (**in CWP No.5872 of 2018**) (Annexure P-1) and has further put to challenge the assessment orders dated 14.02.2018 (Annexure P-17), so also notices dated 14.02.2018 under Section 156 of the I.T. Act and under Section 271(1)(c) read with Section 274 of the I.T. Act (Annexures P-18 and P-19), for the assessment year 2006-2007 (**in CWP No.5813 of 2018**)

and for the assessment year 2007-2008 (in CWP No.5872 of 2018) respectively.

FACTS

2. The petitioner had filed return on 02.11.2006 for the assessment year 2006-2007 declaring income of ₹2,15,250/- and filed return on 13.10.2018 for the assessment year 2007-2008 declaring income of ₹2,89,914/-. The returns were processed under Section 143(1) of the I.T. Act. Notice under Section 148 dated 23.03.2016 was issued for re-assessment, but the petitioner did not receive the said notice. The revenue alleged that the notice under Section 142(1) dated 25.07.2016 and dated 07.11.2016 had not been received back undelivered and that notice dated 25.07.2016 was accompanied by the 'reasons to believe'. Unless, there is compliance of notice under Section 148, there could be no occasion for supply of 'reasons to believe'. On 22.11.2016, another notice under Section 144 of the I.T. Act was issued to him as to why the assessment should not be made *ex parte* with the proposal for addition of income of ₹15,96,74,220/- and ₹31,40,29,200/-. The allegations in the notice dated 22.11.2016 as per 'reasons to believe' were that the petitioner is the settler of 'The Jacaranda Trust' and is beneficial owner holding 100% shareholding in the companies, namely M/s Mulwala Holding Limited, M/s Limerlock International Ltd., M/s Chillingham Holdings Ltd. and M/s Allworth Venture Holdings Ltd. That the assessment by the Trust were held by him he being the beneficiary. The petitioner received notice dated

22.11.2016 and attended the proceedings denying each and every allegation and also further specifically denying the receipt of any of the earlier notices including the notice under Section 148 dated 23.03.2016. Referring to sub-section 6 of Section 78 of the Evidence Act, 1872 (for short 'Evidence Act'), the petitioner invited attention of the Department that the trust deed at Sr. No.13 was a typed copy of deed bearing no signatures and none of the documents had any sanctity in law they not being authenticated or certified by the legal keeper thereof, as contemplated by law and therefore, the revenue should supply legal documents to enable the petitioner to file objections to the proceedings. Still without complying with the said legal demand, a notice dated 16.12.2016 was issued to him as to why the assessment should not be finalized by 20.12.2016.

3. On 20.12.2016, the petitioner repeated his request and reiterated his stand that the notices and the documents, i.e. authenticated were not received by the petitioner and would definitely file his returns/objections to 'reasons to believe' on receipt thereof. Respondent No.2, however, continued to ask the petitioner to file return/objection without complying with the legal demand for the relevant legal documents and the proceedings went on.

4. On 30.01.2018, respondent No.2 required the petitioner to show cause as to why addition of ₹15,96,74,220/- be not made as undisclosed investments. Having not received the documents as sought by him and looking to the conduct of the Department in making haste with

the proceedings without supplying the documents, the petitioner ultimately asked for inspection, and thereafter, filed objections on 13.02.2018, which were duly received by the respondents as to the assumption of jurisdiction under Section 148. After receipt of the objections, as above on 13.02.2018, drastically on the next day, i.e. 14.02.2018, the impugned order was made with the assessment of total income with addition of ₹16,37,37,556/-. On the same day, demand notice was sent under Section 156 of the I.T. Act along with re-assessment order dated 14.02.2018. All that was done without having considered the objections. The reason for not considering objections was that it was “not feasible” to pass separate speaking order in respect of the objections raised, though, it was agreed by respondent No.2 that speaking order was necessary. The petitioner, has therefore, put to challenge all the above orders in both these writ petitions.

ARGUMENTS

5. In support of the writ petitions, Ms. Rameeza Hakeem, learned counsel for the petitioner submitted that the petitioner had filed his objections on 13.02.2018 which is not in dispute. She submitted that after receipt of the objections, the same are mandatorily required to be considered and a 'speaking order' is required to be made and served on the petitioner. Upon such 'speaking order' being made, the petitioner would be entitled to take up his legal remedies. The petitioner is also entitled to raise the plea of limitation which is the legal plea. However, the revenue passed the impugned order making assessment on the next day, i.e.

14.02.2018. The reason for not adjudicating on the objection is unwarranted. She, therefore, prayed for allowing the petition in entirety and in the alternative for remand.

6. *Per contra*, learned counsel for the respondents-Income Tax Department vehemently opposed the writ petitions. He, however, fairly stated that the Apex Court has held that the adjudication on the objections, if any, filed by the assessee is mandatory. He also stated at the Bar that indeed no adjudication on the objection dated 13.02.108 has been made nor any speaking order has been passed. He, however, fervently contended that the said defect would be a curable defect and hence, the assessment orders need not be quashed. He suggested that the Department can be asked to decide the objections even now which the Department would do by considering factual and legal aspects. He also submitted in the alternative that the Department be permitted to pass the 'speaking order' and the assessment orders simultaneously. According to him, such a course of action has been allowed by the Madras High Court.

7. In reply, the learned counsel for the petitioner, however, submitted that the petitioner has a remedy in law to challenge the 'speaking order' which cannot be taken away by allowing such a prayer for making 'simultaneous order'. She also contended that legal plea including the one of limitation ought to be considered by the authority as the petitioner has a right to raise any legal objection.

CONSIDERATION

8. We have heard learned counsel for the rival parties at length.

Learned counsel for the respondents-Income Tax Department fairly stated that the adjudication on the objections filed by the petitioner on 13.02.2018 should have been made as the same is mandatory. The various averments in the petition made by the petitioner about non-service of notice under Section 148 dated 23.03.2016, notice under Section 142 (1) dated 25.07.2016 and 07.11.2016 are not required to be considered for the simple reason that the counsel for the revenue has agreed that the objections having been filed on 13.02.2018 should have been decided. In other words, with this premise, whether notices were served on the petitioner nor not, loses significance. The ultimate object of service of notice on the petitioner was to give him an opportunity to file the objections.

9. The conceded position by both the parties in these present petitions is that the objections on facts as well as on the question of law are required to be decided/adjudicated by the authority in accordance with law and that is mandatory as held by the Apex Court. In our opinion, if adjudication of the objections after having received the same in the wake of the same being mandatory, the submission made by the learned counsel for the respondents-revenue that the same would be a curable defect, does not appeal to us. If it is mandatory to decide the objections one way or the other, it cannot be said that the non-decision thereof would be curable. There is another reason for saying so, namely that if the objections are decided against the Assesse on facts as well as on law, he will have his own remedy. We are, therefore, unable to agree with the learned counsel

for the revenue that non-decision of the objections would be a curable defect. We, therefore, hold that the objections dated 13.02.2018 having been received by the revenue not having been adjudicated would render the consequent actions or orders illegal.

10. It is then significant to note that in the impugned order the reason given for not deciding the objections is strange by saying that it was “not feasible” to pass a separate speaking order, though, it was necessary. From the reading of the impugned order, it appears that the authority found that there was undue delay caused by the petitioner in the proceedings and that is why the authority thought it not feasible to pass separate orders on the objections raised. The counsel for the petitioner has seriously disputed that the petitioner caused any delay. We are unable to agree with the reason given by the authority since the objections ought to have been decided, as fairly stated by the counsel for the revenue.

11. The next submission made by the learned counsel for the revenue that the revenue should be allowed to decide the objections now and the impugned orders should not be quashed, is having no force because as a sequel the impugned orders become illegal and will have to be quashed.

12. The next submission made by the learned counsel for the revenue is that the revenue should be permitted to pass speaking order so also fresh assessment orders simultaneously. This submission has been objected to by the learned counsel for the petitioner on the ground that the right of the petitioner to challenge adverse orders after adjudication on the

objections of the petitioner, if any, cannot be taken away. We find merit in her submission. The petitioner may have his legal remedy. The Court cannot prevent him.

13. Learned counsel for the petitioner then submitted that the petitioner should be given an opportunity to raise objections regarding limitation in respect of the proceedings in question. In our opinion, there can be no prohibition for the petitioner in raising the question of law, namely the issue of limitation before the authority and therefore, the petitioner is always at liberty to do so. All the question of law and the objections raised by the petitioner will have to be decided by the authority according to law. The averments made in the petition about furnishing of documents as contemplated by Section 78(6) of the Evidence Act is a matter of legal objection which may be decided by the authority.

14. In the result, we are of the view that the proceedings in question are required to be remitted to the respondents for fresh hearing and the decision/adjudication according to law. We, therefore, make the following order:-

ORDER

- (i) **CWP No.5872 of 2018** and **CWP No.5873 of 2018** are partly allowed;
- (ii) Impugned orders dated 23.03.2016 (Annexure P-1), order dated 14.02.2018 (Annexure P-17) and consequential two notices dated 14.02.2018 (Annexures P-18 & P-19) in both the writ petitions, are quashed and set aside;
- (iii) The proceedings which are the subject matter of both these

writ petitions are remitted to the respondents for fresh hearing and disposal on the objections dated 13.02.2018 on facts and in addition to the legal objections, if any, including one of limitation and disposal according to law, within six months from the date of obtaining certified copy of this order;

(iv) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

(H.S. MADAN)
JUDGE

November 29, 2018

mahavir

Whether speaking/ reasoned: **No**

Whether Reportable: **No**