

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3232 OF 2022

Naresh Balchandrarao Shinde,
Aged about 60 years, Residing at Gurunirmal Bhavan,
Near New MLA Hostel, Civil Lines,
Nagpur-440 001(MS) India.

..... **PETITIONER**

...V E R S U S...

1. Income Tax Officer, Ward -5(3), Nagpur.
Saraf Chambers, Sadar, Nagpur,
Maharashtra-440 001.
Email:nagpur.ito5.3@incometax.gov.in
2. The Principal Chief Commissioner of
Income Tax, Nagpur.
Aayakar Bhawan, Civil Lines, Nagpur.
3. The Union of India, through its Secretary,
Department of Revenue, Ministry of Finance,
Government of India, New Delhi.-110 002.

..... **RESPONDENTS**

Shri K.A.Hirani, Advocate for petitioner.
Shri Anand Parchure, Advocate for respondents.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- 26th SEPTEMBER, 2022.

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned
counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 31.03.2022 passed under Section 148A(d) of the Income Tax Act, 1961 (for short, the Act of 1961).

3. Facts relevant for considering the challenge as raised are that the petitioner is an individual assessee to tax. On 23.03.2022 he was served with a notice under Section 148 A(b) of the Act of 1961 calling upon him to show cause as to why notice under Section 148 of the Act of 1961 should not be issued. It was stated that on the basis of information it was found that for Assessment Year 2015-16 income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act of 1961. The petitioner was informed that he purchased immovable property for Rs.40,00,000/- and that he had deposited cash of Rs. 20,71,500/- and Rs.16,20,000/-in his bank account. The petitioner was called upon to submit his response to the notice on or before 29.03.2022. The petitioner has submitted his response on 29.03.2022 by stating that he had not purchased the property in question but a sale deed dated 03.02.2015 was executed in favour of his daughter who had purchased the suit property. The petitioner was only acting as special power of attorney holder for her. The amount of Rs.40,00,000/- did not belong to the assessee. As regards deposit of cash of Rs.16,20,000/- was concerned, the same was denied by the petitioner. He sought source of information as

regards the aforesaid deposit. It was thus the case of the petitioner that after excluding the aforesaid two amounts, the income remaining was only to the extent of Rs.20,71,500/- which was less than the limit of Rs.50,00,000/- as stipulated in Section 149(1)(b) of the Act of 1961. The Assessing Officer however did not accept the petitioner's explanation and on the basis of information available on record, satisfaction was recorded that income to the tune of Rs.76,91,500/- was likely to have escaped assessment in the hands of the assessee for Assessment Year 2015-16. Hence it was proposed to issue notice under Section 148 of the Act of 1961. Being aggrieved said order has been challenged.

4. Shri K.A.Hirani, learned counsel for the petitioner submitted that while responding to the notice issued under Section 148 A(b) copy of the registered sale deed dated 03.02.2015 was supplied to the Assessing Officer which clearly indicated that the petitioner was not a party to the transaction of sale/purchase of the property in question. The property had been purchased by his daughter who was separately assessed for income tax and the name of the petitioner was mentioned as he was her constituted attorney. Despite supplying copy of the registered sale deed, the Assessing Officer ignored the same while passing the order under Section 148A(d) of the Act of 1961. He also submitted that the source of information with regard to deposit

of Rs.16,20,000/- was not intimated to the petitioner especially when the petitioner had sought for such information. Under Section 149(1)(b) of the Act of 1961 the time limit for issuing the notice for re-opening of the assessment beyond three years but not less than ten years when the amount involved was Rs.50,00,000/-. If these two transactions were excluded then the income likely to have escaped assessment was only to the extent of Rs.20,71,500/-. Since this undisputed material was available on record with the Assessing Officer, there was no justification in permitting re-opening of the proceedings on this count. It was submitted that the petitioner would be required to contest proceedings under Section 148 of the Act of 1961 for no justifiable reason. On this count, it was submitted that this was a fit case to exercise writ jurisdiction and quash the impugned order.

5. Shri Anand Parchure, learned counsel for the respondents supported the impugned order. It was submitted at the outset that the petitioner could contest the notice issued under Section 148 of the Act of 1961 and there was no reason to entertain the writ petition. There would be an opportunity for the petitioner to file a reply to the assessment proceedings and thereafter, if aggrieved, the petitioner could challenge the same. The learned counsel relied upon the reply as filed and submitted that the proceedings were initiated on the basis of the information flagged on the

Insight Portal for information filing of returns for the Assessment Year 2015-16. It was thus submitted that the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties and we have perused the documents on record. To consider whether the writ petition could be entertained, it would be necessary to refer to certain undisputed facts. The notice under Section 148 A(b) dated 23.03.2022 grants time to the petitioner to respond to the same by 29.03.2022. The period as granted is less than seven days as prescribed by Section 148A(b) of the Act of 1961. Nevertheless, the petitioner has responded to the notice by his reply dated 29.03.2022.

Alongwith the reply, copy of the registered sale deed dated 03.02.2015 indicating that it was his daughter who had purchased the immovable property therein was supplied. The petitioner's daughter is separately assessed for tax. The name of the petitioner is mentioned as special power of attorney holder for his daughter. The registered sale deed clearly indicates that the petitioner is not the purchaser of the immovable property mentioned therein but it is his daughter, a separate assessee. The amount of consideration mentioned is Rs.40,00,000/- and it is stated that the purchaser had availed housing loan for the same. On a bare perusal of the registered sale deed, it becomes evident that the petitioner is not the

purchaser of the said property as stated in the notice issued under Section 148A (b) of the Act of 1961. Despite supplying copy of the registered sale deed to the Assessing Officer, it has not been taken into consideration by him before passing the order under Section 148A(d) of the Act of 1961. The same thus clearly indicates lack of application of judicious mind to the material on record. The amount of Rs.40,00,000/- as mentioned in the notice issued on 23.03.2022 under Section 148A(b) thus deserves to be excluded from consideration.

7. As regards deposit of cash of Rs.16,20,000/- is concerned, the petitioner had sought disclosure of the material or the source of information on the basis of which such notice was issued. The petitioner denied having deposited the aforesaid amount in his bank account. The material/source of information was not supplied to the petitioner. Be that as it may, even if the amount of Rs.40,00,000/- as mentioned in the notice dated 23.03.2022 is excluded from consideration for the reason that the petitioner is not the purchaser of the property in question, the amount remaining for consideration is Rs.20,71,500/- and Rs.16,20,000/- thus totaling Rs.36,91,500/-. In this regard, if the provisions of Section 149(1)(b) of the Act of 1961 are considered, it is seen that only if the amount in question that is likely to have escaped assessment is Rs.50,00,000/- or more, the time limit

for issuing notice to re-open the assessment is three years but less than ten years. Thus if the income that is likely to escape assessment is only Rs.36,91,500/- after excluding the amount of Rs.40,00,000/-, it is clear that the proceedings are not liable to be re-opened as the amount involved is less than the one contemplated under Section 149(1)(b) of the Act of 1961 and the same pertains to Assessment Year 2015-16. The notice under Section 148(b) is dated 23.03.2022 which is beyond the permissible period of three years. On this count, a case for interference has been made out.

8. In the light of this undisputed position, it would be futile to require the petitioner to face proceedings under Section 148 of the Act of 1961. The material on record that was placed before the Assessing Officer warranted consideration especially in the light of the fact that the document relied was a registered sale deed. If the amount of Rs.40,00,000/- mentioned therein is excluded from consideration, the notice as issued on 23.03.2022 falls foul of the provisions of Section 149(1)(b) of the Act of 1961. Hence for this reason, we do not find that the petitioner should be required to further contest the proceedings under Section 148 of the Act of 1961.

9. In that view of the matter, the order dated 31.03.2022 passed under Section 148 A(d) of the Income Tax Act, 1961 as well as notice dated 31.03.2022 issued under Section 148 of the Act of 1961 are quashed and set

aside. The respondents are free to take appropriate steps in accordance with law.

Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar.