

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

CWP No.8176 of 2022

Date of Decision : April 28th, 2022

Neeraj Singla

....Petitioner

Versus

National Faceless Assessment Centre (NAFAC), Delhi and another

.....Respondents

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Sunil K. Mukhi, Advocate
for the petitioner.

Mr. Sandeep Goyal, Senior Standing Counsel assisted by
Mr. Vaibhav Gupta, Junior Standing Counsel
for the respondents.

PANKAJ JAIN, J.

The present writ petition has been filed under Article 226 of the Constitution of India seeking quashing of the Notice dated 30th March, 2021 issued under Section 148 of the Income Tax Act, 1961 (for short, 'the 1961 Act') and the Assessment Order dated 30th March, 2022 issued pursuant thereto under Section 147 read with Section 144B of the 1961 Act for the Assessment Year 2015-16.

2. Petitioner an assessee was served notice dated 30th March, 2021 under Section 148 of the 1961 Act for the Assessment Year 2015-16 by the Assessing Officer for Ward No.5, Yamuna Nagar regarding reasons of re-opening the assessment.

3. The petitioner filed return of income for the Assessment Year 2015-16 and response to notice under Section 148. Thereafter he was

served with notice under Section 143(2) on 29th June, 2021 vide Annexure P-5. Petitioner responded to the notice under Section 143(2) on 15th July, 2021 and 14th August, 2021. The petitioner raised objection w.r.t. the jurisdiction of ITO Ward 5 Yamuna Nagar claiming that the assessee is doing business in Karnal and, thus, it is only ITO Karnal who would have territorial jurisdiction. Further, the petitioner denied having received the amounts from Shri Hitesh Jain Proprietor M/s Mittarsain Rajesh, Karnal and also denied having paid any amount to the said person thus, factually disputing the premise on which the notice was issued. The petitioner also sought copy of the satisfaction note recorded by the Principal CIT from the Authorities. The Authorities responded vide communication dated 16th August, 2021 wherein copy of the Approval under Section 151 of the 1961 Act as recorded by PCIT was supplied. The same is part of the paper-book placed at Annexure P-6. On 10th December, 2021, the petitioner was served with notice under Section 142(1) of the 1961 Act asking him to produce the following documents on or before 20th December, 2021 by 01:54 PM : -

- “1. Please furnish the nature and details of business carried on by you during the year under consideration.*
- 2. Please furnish the computation of income.*
- 3. Please furnish the details of all bank accounts held by you and their statements for the year under consideration.”*

4. After the petitioner failed to respond, he was again issued

notice under Section 142(1) of the 1961 Act to furnish the aforesaid documents on or before 29th December, 2021 by 02:59 PM. The petitioner responded to the aforesaid notices under Section 142(1) of the 1961 Act by submitting response on 29th December, 2021, which reads as under:-

“We have filed objection for re assessment proceedings on 14/08/2021 and till date we have not received any letter in response to our objection. Please settle our objection and drop the re assessment proceedings. We also submit we have filed ITR in response to notice under 148 of Income tax Act and raised objection for re assessment as there is no valid reason to invoke re assessment proceedings under 147 of Income Tax act. Please drop the proceedings.”

However, it is not forthcoming that whether the documents asked for by the respondents were submitted or not.

5. Be that as it may, all the objections filed by the petitioner dated 14th August, 2021 to the reopening of the assessment for the Assessment Year 2015-16 were decided and communicated to the petitioner on 4th January, 2022 vide Annexure P-9.

6. The factual objections raised by the petitioner were also dealt with on merits and rejected. The said communication dated 4th January, 2022 was supplemented by further communication dated 20th January, 2022 dealing all the objections raised by the petitioner. The petitioner was further issued notice under Section 142(1) of the 1961 Act on 4th March,

2022 whereby he was asked to respond on or before 9th March, 2022.

7. On 22nd March, 2022, the petitioner was issued Show Cause Notice vide Annexure P-14 along with draft assessment order. The same was followed by final Assessment Order passed under Section 147 read with Section 144B of the 1961 Act dated 30th March, 2022.

8. Assailing the action of authorities, Counsel for the petitioner argued that the Assessing Officer, who issued notice dated 30th March, 2021 under Section 148 of the 1961 Act (Annexure P-3) had no jurisdiction. He asserts that the ITO at Yamuna Nagar has no jurisdiction as during all the years preceding the notice (Annexure P-3), the petitioner has been filing his returns with the Authorities at Karnal. In order to impress upon his submission, counsel for the petitioner heavily relies upon the returns collectively appended as Annexure P-1. He further submits that there being a jurisdictional issue involved in the present petition, it will be a fit case for this Court to exercise jurisdiction under Article 226 of the Constitution of India, even though the petitioner has a statutory remedy of appeal against the final Assessment Order dated 30th March, 2022. Further, Counsel for the petitioner relies upon interim order dated 29th of March, 2022 passed in CWP No.6307 of 2022.

9. Ld. Counsel argues that there is no sufficient material on record on which the assessment could be reopened and, thus, it is a case of change of opinion which is not permissible under the law. He further asserts that

even the necessary approval under Section 151 has been granted in a mechanical manner and, thus, it is in fact a case of no approval.

10. We have heard counsel for the petitioner at considerable length and have gone through records of the case.

11. Before advertng to the merits of the case, it needs to be noticed that no scrutiny has taken place in the case of assessee for the relevant year. His case was processed under Section 143(1) of the 1961 Act. The intimation under Section 143(1) being not an assessment there is no question of Assessing Officer having formed an opinion thus the question of changing the same does not arise in the present case. So far as primary contention of the petitioner w.r.t. the jurisdictional issue is concerned, admittedly as per documents placed on record by the petitioner himself Income Tax Return for the Assessment Year 2019-20 carries the details of the Assessing Officer as Ward 5, Yamuna Nagar. Income Tax Returns for the Assessment Year 2020-21 and that for the year 2021-22 do not carry any details of the Assessing Officer. While dealing with the objection raised by the petitioner *viz-a-viz* territorial jurisdiction of the Assessing Officer, the Authorities held that :-

“2. With regard to the assessee’s contention that the assessee is doing business in Karnal as address of assessee has been mentioned in notice itself, hence the ITO ward 5 Yamuna Nagar has no jurisdiction to issue notice under section 148 of Income Tax Act and hence, the notice under section 148 and 143(2) being without jurisdiction, the

complete re assessment proceeding is void ab initio is not acceptable in view of the fact that while allotment of PAN, the assessee's official address was given as "209, Hari Prasad Colony, Yamuna Nagar, Haryana" and hence, the jurisdiction of the PAN vested with ITO, Ward-5, Yamuna Nagar. If the official address of the assessee changed later on, the onus lied on the assessee to get his official address updated in the PAN database, however, as the assessee did not get the address updated on the PAN, PAN is still lying with the same AO. Hence, this objection of the assessee is also not tenable and is hereby rejected."

12. The petitioner is not in a position to controvert the findings recorded by the Authority on facts. It is not possible to go into the aforesaid factual findings while exercising jurisdiction under Article 226 of the Constitution of India. Ld. Counsel for the petitioner has placed reliance on judgment passed by High Court of Delhi in **W.P (C) 1569/2015 & CM No.2800/2015** titled as **'Dushyant Kumar Jain vs. Deputy Commissioner of Income Tax and another'** on 15th January, 2016, to further contend that it is the same AO who passed the original assessment order, who is empowered to exercise powers under Section 147/148 to reopen the assessment. The said judgment again will have no bearing on the facts of the present case. The reason is not far to seek. In the present case order under Section 143(3) was never passed.

13. After going through the record of the case, we do not find that the Authorities fell into any jurisdictional error which would warrant interference by the writ Court. As discussed herein above, the petitioner has

been given sufficient opportunities of hearing and has been confronted with all the material that forms basis for reopening the case.

14. Since we are non-suiting the petitioner on the ground of maintainability of the present writ petition under Article 226 of the Constitution of India, we have not expressed any opinion on merits. All the pleas available to the petitioner on the questions of fact and law are left open to be decided by the Appellate Authority. The petitioner will be entitled to raise all pleas before the appropriate Authority.

15. In view of the discussion made herein above, the present writ petition is dismissed being without merits.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

April 28th, 2022

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No