

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

CWP No.9142 of 2022

Date of Decision : 02.06.2022

Gian Castings Private Limited

....Petitioner

Versus

Central Board of Direct Taxes and others

.....Respondents

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

Present : Mr. Pankaj Jain, Senior Advocate assisted by
Ms. Divya Suri, Advocate
for the petitioner.

Mr. Rajesh Katoch, Senior Standing Counsel assisted by
Ms. Pridhi Jaswinder Sandhu, Junior Standing Counsel
for the respondents.

PANKAJ JAIN, J.

The challenge in the present writ petition is to the notice issued to the petitioner under Section 148A(b) of the Income Tax Act, 1961 (for short, 'the Act') dated 14th March, 2022 (Annexure P-1), and notice issued under Section 148 of the Act, dated 7th April, 2022 (Annexure P-5) for the Assessment Year 2018-2019.

2. Petitioner, a Private Limited Company is an assessee under the Act. The return filed by the petitioner for the Assessment Year 2018-2019 dated 29th September, 2018 was processed under Section 143(1) of the Act. The petitioner received notice under Section 148A(b) on 14th March, 2022 (Annexure P-1) whereby he was intimated that income chargeable to tax for

the Assessment Year 2018-2019 has escaped assessment. The details of the information and the inquiry forming basis for issuance of notice was also supplied along with the said notice. The notice was replied to vide Annexure P-3 raising objections. The said objections raised *qua* notice issued under Section 148A(b) were decided vide Order dated 7th of April, 2022 appended as Annexure P-4 to the present writ petition. The petitioner was served with notice under Section 148 of the Act on the same day whereby the petitioner has been asked to furnish a return of his income for the Assessment Year 2018-2019 within 30 days.

3. The contention raised by Ld. Senior Counsel for the petitioner is that there is no escapement of income which can form basis for proceeding against the petitioner. It has been further contended that while deciding objections submitted by the petitioner in response to notice under Section 148A(b), the stand of the petitioner has not been taken into consideration and the Order dated 7th of April, 2022 has been passed in a mechanical manner, resulting in miscarriage of justice. Ld. Senior Counsel thus submits that the stand of the petitioner having not been dealt, it is a case where this Court should interfere exercising jurisdiction under Article 226 of the Constitution of India.

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

5. It will be apposite to notice here that after coming into force of the Amending Act, 2021, provisions contained in Sections 147 and 148 of

the Act, have undergone change. Section 148 of the Act has been made subject to a newly incorporated provision contained in Section 148A of the Act. Section 148A of the Act provides for conducting inquiry, providing opportunity before issuance of notice under Section 148. After receiving notice under Section 148, assessee is required to furnish return on his income within time period as specified in the notice. On his filing return, the Assessing Officer is required by the Statute to assess or reassess such income. It is only on such assessment or reassessment of the income by the Assessing Officer that the proceedings initiated can be said to have been concluded. Needless to say that any such order passed under Section 147 is further subject to appeal under Section 246-A of the Act.

6. The primary issue that arises 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 ?”

7. The debate is not new. While dealing with the similar situation under the old Act i.e. Indian Income Tax Act, 1922, Division Bench of this Court in **'Lachhman Das Nayar and others vs. Hans Raj Puri, Income-Tax Officer, Amritsar and others, 1953 AIR (P&H) 55**, held that -

“An examination of the scheme of the Act and the words used in section 34 of the Act and the various cases that I have referred to above show that the legislature has entrusted the

determination of facts and of law to the Income-tax Officers. A particular machinery has been set up under the Act “by the use of which alone” total assessable income for the purposes of the Income-tax is to be ascertained and jurisdiction to question the assessment otherwise than by the use of this machinery is incompatible with the scheme of the Act. The challenge of the action of the Income-Tax Officer by a writ prohibition or mandamus is , therefore, not available to the assessee.”

8. In '**Rasulji Buxji Kathawala vs. Income Tax Commissioner, Delhi and another'** (Civil Writ No.44 of 1955, D/d. 2.4.1956) while dealing with the similar situation under the 1922 Act, Division Bench of Rajasthan High Court held that -

“But where as in this case no part of the Act is being attacked, there is, in our opinion, no justification for us to intervene at this stage when other remedies which are not necessarily onerous are still open to the applicant under the Act. We, therefore, refuse to intervene at this stage in this case, and leave it to the applicant to pursue his remedies under the Income-tax Act so far as the question of his chargeability to income-tax under the Act, or other matters are concerned.”

9. Division Bench of this Court in the case of '**Sumit Passi vs. Assistant Commissioner of Income-Tax'**, (2016) 386 ITR, held that -

“29.The reasons assigned by the Assessing Officer to tentatively believe that taxable income has escaped assessment cannot be brushed aside at the threshold without a fact-finding procedure, more-so when the petitioners are not remediless and

have got equally efficacious recourses under the Act.

30. A somewhat similar dictum is discernible from CIT v. Chhabil Dass Agarwal (2014) 1 SCC 603 as it holds that the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals).

31. Having held so, it is not expedient for this Court to express its opinion on the rival submissions as it may unwittingly cause prejudice to either party. Suffice it to say that no case to quash the notice(s) issued under Section 148 read with Section 147 of the Act or the order(s) rejecting the objections, is made out at this premature stage.”

10. Delhi High Court in **W.P.(C) 5787/2022** titled as **Gulmuhar Silk Pvt. Ltd. vs. Income Tax Officer Ward 10(3) Delhi**, while considering the same question held that -

*“6. Though it is the petitioner's case that the impugned order is erroneous on facts, yet this Court is of the opinion that the petitioner would have ample opportunity during the course of proceedings before different statutory forums to show that the finding of fact arrived at was erroneous. Moreover, at this stage, no assessment order has been passed and it has only been observed that it is a fit case for issuance of notice under Section 148 of the Act. In fact, the Supreme Court in **Commissioner of Income Tax and Ors. Vs. Chhabil Das Agarwal, (2014) 1 SCC 603** has held that as the Income Tax Act, 1961 provides complete machinery for assessment/*

reassessment of tax, assessee is not permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226.”

11. Supreme Court in the case of '**Raymond Woollen Mills Limited vs. Income Tax Officer, Centre XI, Range Bombay and others'** (Civil Appeals No.1972 of 1992 with No.1973 of 1992. D/d 17.12.1997), held that -

“3. In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority.”

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.

14. Needless to say that nothing herein observed shall be construed as an opinion on the merits of the case.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

June 02, 2022

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No