

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

**CWP No. 10583 of 2022(O&M)
Date of Decision : 07.07.2022**

Midland Microfin Ltd.

....Petitioner

Versus

Union of India and others

.....Respondents

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

Present : Mr. J. S. Bhasin, Advocate
for the petitioner.

PANKAJ JAIN, J.

1. By way of present writ petition filed under Article 226 of the Constitution, the petitioner seeks issuance of writ in the nature of certiorari for quashing notice issued to the petitioner under Section 148A (b) of the Income Tax Act, 1961 (for short 'the Act') dated 09.03.2022 (Annexure P-1), order passed under Section 148A(d) dated 31.3.2022 along with notice under Section 148 (Annexure P-2) for the assessment year 2018-19.

2. The petitioner is a Company incorporated under the provisions of the Companies Act, 1956 and is an assessee under the Income Tax Act. For the assessment year 2018-19, the petitioner filed the income tax return declaring total income amounting to Rs.2,26,23,550/-. The assessment was completed under Section 143(3) read with Section 144B of the Act vide order dated 20.04.2021. On 9.3.2022 the petitioner was served with notice under Section 148A (b) of the Act for the same assessment year i.e. 2018-19 claiming that the information with the authorities suggests that the income

chargeable to the tax for the assessment year 2018-19 has escaped the assessment within the meaning of Section 147 of the Act. The petitioner responded to the same vide replies dated 15.03.2022 and that dated 16.3.2022. The explanation offered by the petitioner was rejected vide order dated 31.3.2022 passed under Section 148A(d) which was served upon the petitioner along with notice under Section 148 dated 31.3.2022 (Annexure P-2). The petitioner has approached this Court seeking writ of certiorari against the proceedings initiated under Section 148A(b) for the assessment year 2018-19 finally culminating in the notice issued under Section 148 of the Act. The details of the information and the enquiry on the basis of issuance of notice were supplied to the petitioner along with the said notice. The challenge to the notice under Section 148A (b) and Section 148 has been raised contending that the stand of the petitioner has not been taken into consideration resulting in miscarriage of justice.

3. We have heard learned Counsel for the petitioner and have carefully gone through the records of the case.

4. The primary issue that would arise 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 ?”

5. The aforesaid question already stands answered by this Court in CWP No.9142 of 2022 decided vide order dated 2.6.2022 titled as **Gian Castings Pvt. Ltd. Vs. Central Board of Direct Taxes and others**

holding that :-

“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.”

6. Needless to mention that the aforesaid order was challenged in Special Leave to Appeal (C) No. 10762 of 2022 titled as 'Gian Castings Pvt. Ltd. Vs. Central Board of Direct Taxes and others'. The Apex Court upheld the said order vide order dated 17.6.2022.

7. Faced with the situation, the petitioner relies upon the order passed in Civil Appeal No. 11189 of 2016 titled as Jeans Knit (P) Ltd. Vs. Deputy Commissioner of Income Tax and others, reported as (2017) 390 ITR 10 (SC) to submit that the writ petition is maintainable against notice issued under Section 148 of the Act. It needs to be noticed that in the case of Jeans Knit (supra), Supreme Court relied upon law laid down in ***Calcutta Discount Company vs. Income-Tax Officer, Companies*** reported as (1961) 41 ITR 191 (SC). In the case of Calcutta Discount Company (supra), it was held that:

“The High Courts have ample powers under Article 226 of the Constitution, and are in duty bound thereunder, to issue such appropriate orders or directions as are necessary in order to prevent persons from being subjected to lengthy proceedings and unnecessary harassments by an executive authority acting without jurisdiction. Alternative remedies such as are provided by the Income-tax Act cannot always be a sufficient reason for refusing quick relief in a fit and proper case.”

8. Admittedly in the present case the procedure as contemplated of the 1961 Act was followed and the authority acted within jurisdiction though petitioner alleges that it erred as the petitioner claims that the order passed under section 148A (d) warrants interference owing to error of fact.

9. Keeping in view that aforesaid facts and the settled proposition of law, we find no reason to interfere at this stage.

10. As a sequel of the discussion made hereinabove, the present writ petition is dismissed. Nothing herein observed shall be construed as an opinion on the merits of the case.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

July 07, 2022
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Whether speaking/reasoned	:	Yes
Whether reportable	:	No