

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

**CWP No.13037 of 2022
Date of Decision : 02.06.2022**

Arvind Kumar

....Petitioner

Versus

Principal Chief Commissioner of Income Tax and another

.....Respondents

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

Present : Mr. Nilesh Bhardwaj, Advocate
for the petitioner.

PANKAJ JAIN, J.

By way of present writ petition, the petitioner has laid challenge to the notice dated 7th April, 2022 under Section 148 of the Income Tax Act, 1961 (for short, 'the Act') (Annexure P-6), and order dated 6th April, 2022 passed under Section 148A(d) of the Act, alleging that the same has been passed in derogation to the provisions contained in Section 149 prescribing limitation of 3 years from the end of the relevant assessment which in the present case is 2015-16.

2. We have heard Ld. Counsel for the petitioner and have carefully gone through the records of the case.

3. The plea w.r.t. to power under Section 149 of the 1961 Act, cannot be attracted in the facts of the present case as the case of the petitioner would fall within the ambit of Section 149(1)(b) and not under Section 149(1)(a) as the income which is alleged to have escaped

assessment is more than Rs.50.00 lacs. So far as challenge to the order dated 6th of April, 2022 (Annexure P-5) passed under Section 148A(d) and notice under Section 148 is concerned, Counsel for the petitioner has not been able to make out a case warranting interference under Article 226 of the Constitution of India.

4. 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 ?”

5. 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.”

6. 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.”

7. 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.”

8. 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.”*

9. 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.”

10. 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. The correctness of order under Section 148A(d) is being challenged on the factual premise contending that jurisdiction though vested has been wrongly exercised. 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.

11. 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.

12. 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