IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8526 of 2023

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Lakhendra Kumar Raushan @ Lakhendra Kumar Roushan, Son of Nageshwar Paswan, Resident of Village-Loma, PS-Jandaha, District-Vaishali.

... ... Petitioner/s

Versus

1. The Principal Commissioner of Income Tax-1 Patna, 2nd Floor, Central Revenue Building, Beer Chand Patel Marg, Patna.
2. The Assistant Director of Income Tax, Investigation, Central Revenue Building, Veer Chand Patel Marg, Patna.
3. The Income Tax Officer, ITO World 1(3), Hajipur Income Tax Office, District-Vaishali.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Niraj Kumar, Advocate
For the Respondent/s : Mrs. Archana Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-10-2023

The writ petition is filed seeking that the notice issued under Section 148A(b) and the order under Section 148A(d) of the Income Tax Act, 1961 ("the IT Act" for brevity) be quashed. The petitioner, an assessee under the IT Act had stood for the elections to the Legislative Assembly in pursuance to which he declared his movable and immovable assets as well as those in the name of his spouse and dependents, in accordance with the said requirement, along with his nomination papers. It is submitted that inadvertently there was duplication in so far as repeating his assets in the columns set apart for his spouse and dependents. The Assistant Director of Income Tax, Investigation, Patna, pursuant to orders of the Election Commission of India verified the details of the assets and liabilities disclosed by the petitioner and issued a notice dated 02.11.2021 under Section 131(1A) of the IT Act seeking further details about investments in land, building and vehicles both in his personal name and that of his dependents. The petitioner replied to the same, producing certain documents which are produced in the writ petition as Annexures 3 to 6. A further communication was addressed to the petitioner as per Annexure-7 requiring him to submit the modes of investment, the statement of term loan accounts, account in the SBI and the statement of all the bank accounts maintained by the petitioner. The petitioner is said to have submitted the same by Annexure-8, undertaking to produce witnesses to substantiate the documents produced. By Annexure-9 petitioner was requested to submit the PAN and address of one other person along with whom the petitioner had acquired a land, the sale-deed of which was earlier produced.

2. The petitioner then was issued with a notice under Section 148A(b). The annexure attached to the notice merely

spoke of the description of unexplained investment of purchase of agriculture land and purchase of vehicle coming to Rs. 55,00,000/- (fifty five lacs) and Rs. 33,41,277/- (thirty three lacs forty one thousand two hundred seventy seven). The petitioner submits that there was no sufficient material regarding the information received, but still, he submitted a reply as per Annexure-12 again furnishing the details earlier supplied and also the documents to show the manner in which the money was sourced. Without considering the reply of the petitioner, mechanically Annexure-13 was passed, which is an order under Section 149A(d) of the IT Act. Now, Annexure-14 notice has been issued under Section 148 of the IT Act. Annexures 13 and 14 are challenged in the writ petition.

3. Learned counsel for the assessee Shri Niraj Kumar pointed out that there were no details regarding the information obtained by the Assessing Officer supplied to the petitioner to make an effective reply. The mere amounts stated, with reference to unspecified lands and vehicles cannot lead to a satisfaction as is required under Section 148A that this is a fit case for the purpose of proceeding under Section 148. It is argued that there is no valid satisfaction entered into by the Income Tax Authority and the petitioner cannot be called upon

to explain under Section 148 with regard to the alleged escaped income, especially when the prior satisfaction required to proceed under Section 148 has not been arrived at. The learned counsel would rely on Annexure-11 judgment of a Division Bench of this Court in **CWJC No. 8343 of 2022 dated 28.03.2023 (Alkem Laboratories Limited v. Principal Commissioner of Income Tax-1, Patna).**

4. Learned Senior Standing Counsel for the Income Tax Department Smt. Archana Sinha at the outset points out that there is no cause for invocation of the extraordinary remedy under Article 226 of the Constitution of India, especially when the petitioner can show cause to the notice under Section 148. The mere satisfaction that the information is sufficient to proceed is only a *prima facie* satisfaction entered into, that it is a fit case to proceed under Section 148. The petitioner can definitely place his contentions before the Assessing Officer and the order under Section 148A(d) cannot regulate the adjudication as to whether there is actually an escaped income, capable of being added on, under Section 148 of the IT Act. The learned Senior Standing Counsel would point out that the very same Division Bench has held otherwise in **CWJC No. 14188 of 2022** by judgment dated 21.06.2023 in the case of **Anju**

Singh v. The Chief Commissioner of Income Tax (In Situ) Patna. It is also pointed out that the information, as has been stated by the petitioner himself, was available from the declaration made by the petitioner along with his nomination papers and the details were supplied by the petitioner himself pursuant to a notice under Section 131(1A). There is no further information that could be supplied to the petitioner and in that circumstance the contention should be negatived. The documents produced by the petitioner himself is relied on to further the contention of there being no further information to be supplied to the petitioner.

5. At the outset, we will look at the coordinate Bench decisions which were placed before us which according to the department are conflicting; which contention according to us is not correct. ***Alkem Laboratories Limited*** (supra) was a case in which the notice under Section 148A(b) spoke of another Income Tax Authority having informed that the assessee had capital gains of a specified amount during the previous year which was proposed as an escaped assessment within the meaning of Section 147 of the IT Act. The Division Bench found that the official respondent did not properly disclose the information that would be required to be supplied since the

source of information was said to be merely *"other Income Tax Authority"* and but for the amount of capital gains specified as proposed escaped income, there were no details supplied. It was in the above circumstance that the notice under Section 148 A(b), the order under Section 148 A(d) and the resultant notice under Section 147 of the IT Act were set aside leaving liberty for issuance of a fresh notice and directing the Income Tax Authority to furnish clear information to the assessee as stipulated under Section 148A(b) of the IT Act.

6. ***Anju Singh*** (supra) was a case in which one of the allegations was with respect to non supply of the details of the information. Therein, the information available was on an inquiry conducted from the details available on the Insight Portal; on analysis of which it was found that the assessee had received dividend from J.M. Equity Hybrid Fund which specified amount was proposed to be treated as an escaped income for grounds stated in the notice. The contention of the assessee was that the report of the Investigation Wing referred to statements of key persons which were not supplied to the assessee; which made the notice issued and the opportunity afforded, illusory. The Division Bench found favour with the submission of the department that the statement of key persons

only in so far as it was relevant to the assessee was supplied since the disclosure of the complete statement would lead to confidential contents, not relatable to the assessee being disclosed.

7. We do not find any conflict in the two decisions rendered by a co-equal Bench and the divergent result which ensued in the said writ petitions, revolved around the facts coming out in the individual cases; essentially the sufficiency or lack of it of the information supplied to the assessee based on which the proceeding under Section 148A was initiated. The Division Bench in ***Anju Singh*** (supra) noticed the provision under Section 148A having been introduced by way of a subsequent amendment and we extract hereunder the succinct interpretation placed on the provision and the resultant consequence on the facts of the case as coming forth from Paragraphs 15, 16 and 17 of the judgment:-

> *"15. An assessee does not come in picture at the first stage stipulated in Clause (a) hereinabove which relates to an enquiry to be conducted if required with respect to an information which suggests that the income chargeable to tax has escaped assessment. For an enquiry under Clause (a) of Section 148A, the Assessing Officer must have some information, for conducting an enquiry. Conducting an enquiry under Clause (a) of Section 148A is not mandatory and as is clear from the language of the provision, which can*

be done, 'if required'. The second stage stipulated in Clause (b) of Section 148A requires service of notice on the basis of the information suggesting that income chargeable to tax has escaped assessment for a relevant assessment year, with the result of the enquiry conducted, if any, as per Clause (a). By issuance of notice under Clause (b), an opportunity of hearing is provided to the assessee so as to enable the assessee to object to the proposed issuance of notice under Section 148 of the Act. Clause (c) mandates consideration of reply of the assessee furnished in response to the show cause notice issued under Clause (b) of Section 148A. An assessing authority is ordained to decide on the basis of material available on record including reply of the assessee "whether or not it is a fit case to issue a notice under Section 148" by passing an order. An Assessing Officer, in our opinion, exercising power under Clause (d) of Section 148A does not conclusively hold that any income chargeable to tax has in fact escaped assessment for any assessment year. He simply decides, based on the material available before him, by passing an order as to whether or not "it is a fit case to issue a notice under Section 148 of the Act".

16. Here is not a case where the Assessing Officer did not have any information based on which a notice was issued to the petitioner under Clause (b). It is not in dispute that the copy of the report of the Investigation Wing available to the Assessing Officer in the form of "not on J.M. Balanced Fund- Annual Dividend Option beneficiaries" was provided to the petitioner well in advance on 08.08.2022. It is not the petitioner's case that the said information/report was wholly irrelevant for exercise of power under Section 147 of the Act. We reiterate that at the stage of taking decision under Section 148 of the Act, the Assessing Officer is required to form an opinion based on information available before him, other materials on record and reply of an assessee

> *submitted under Clause (b) of Section 148A of the Act, regarding "fitness of a case" for issuance of notice under Section 148A of the Act.*
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> *17. It would have been different matter had there been no information at all or information available with the Assessing Officer were though irrelevant, still the Assessing Officer reached a conclusion that it was a fit case for issuance of notice under Section 148 of the Act."*

8. We also notice the judgment of the Hon'ble Supreme Court in ***Union of India & Ors. v. Ashish Agarwal; (2023) 1 SCC 617***, Paragraph 19 whereof is extracted hereunder :-

> *"19. However, by way of Section 148-A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under Section 148, the assessing officer shall:*
>
> *(i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment:*
>
> *(ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority;*
>
> *(iii) consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and*
>
> *(iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under Section 148 of the IT Act; and*
>
> *(v) the AO is required to pass a specific order within the time stipulated."*

9. We have to look at the facts arising in the above case with the above interpretation of the provision under Section 148A in our minds. The petitioner was issued with a notice under Section 131(1A) produced at Annexure-2. It has been very specifically stated that the notice is pursuant to verification of the affidavits filed by the candidates contesting elections as mandated by the Election Commission of India. The disclosure of assets and liabilities were compared with the information available from the records of the department and sources of income with respect to five aspects, with separate amounts specified, were sought from the petitioner. The petitioner had supplied documents as per Annexures 3 to 6 and also as seen from Annexures 8 and 9.

10. A further notice (Annexure-10) was issued under Section 148A(b) of the IT Act in which the specific proposal for escaped income was with respect to the purchase of agriculture land and purchase of vehicle, as available under the column for description and the amounts were specified as Rs. 55,00,000/- and Rs. 33,41,277/-. We should understand from the manner in which the tabulation is prepared that Rs. 55,00,000/- referred to, is of the agriculture land and Rs. 33,41,277/- referred to, is of the purchase of vehicle. We have to immediately notice that the

amounts shown does not tally with what has been separately detailed under Annexure-2 notice. It also does not refer to the specific documents based on which the allegation of escaped income is raised. Despite this, the Income Tax Authority proceeded and passed an order under Section 148 A(d) as per Annexure-13. In Annexure-13 it has been stated that the show-cause notice was not replied to. There is no reference to Annexure 8, which is said to have been filed by the assessee. Based on Annexure-13 order passed under Section 148 A(d), now a notice under Section 148 of the IT Act (Annexure-14) has been issued.

11. We perfectly agree with the submission of the learned Senior Standing Counsel that an order passed under Section 148A(d) does not regulate the further proceedings under Section 148 and the *prima facie* satisfaction entered into by the Income Tax Authority, in so far as the case being one fit for being proceeded under Section 148, cannot lead to an automatic addition being made of the proposed unescaped income. However, when the statutory mandate is that an inquiry should be conducted, if required and a notice issued, both with the prior approval of the specified authority with supply of the information which prompted the initiation of the proceedings;

then neither can the information supplied be meagre and haphazard nor can the *prima facie* satisfaction be entered into in a mechanical manner.

12. It is the submission of the department that the notice under Section 131(1A) was issued based on the declaration made by the petitioner along with his nomination papers. There were also documents supplied by the petitioner pursuant to the notice based on which a further notice was issued under Section 148A(b) in which the basis of the notice is to be disclosed; the absence of which is very evident. But for the description of unexplained investment with respect to landed property and vehicle and the amount of escaped income proposed, nothing else was stated. It is very evident that the details sought for under Section 131(1A) were with respect to separate investments made on agriculture land, inherited commercial land, investments made in the property belonging to the HUF comprising of the petitioner and his family members, deposits in banks and two vehicles purchased by himself and his son. There is no specification as to which among them was sought to be proceeded against under Section 148.

13. Further, the petitioner has now produced a corrigendum issued by the department as Annexure- 16 dated

30.05.2023. The corrigendum has more specification in so far as the unexplained investments, with respect to purchase of agriculture land coming to Rs. 26,72,000/- and the purchase of a vehicle coming to Rs. 6,69,277/-. We cannot but notice that the corrigendum is dated 30.05.2023 while the order passed under Section 148A(d) is dated 24.03.2023 on which date itself the notice under Section 148 was issued; the latter two documents having been produced as Annexure-13 and Annexure-14. Hence, obviously, there is infirmity and illegality in the order passed under Section 148A(d) which vitiates the further notice issued under Section 148.

14. The corrigendum issued more than two months after the order under Section 148A(d) vitiates the order beyond repair. We also notice that sufficient material regarding the assets on which investments are alleged to have been made have also not been disclosed in the notice under Section 148A(b). If an agriculture land is referred to, it is only proper that the description along with the details of the location as also the specification of the deed by which the acquisition was made should be informed to the assessee. Similarly in the case of a vehicle, the Registration Number and the details are to be supplied. Only such information supplied would enable the

assessee to make an effective reply; even if the said investments are picked out from the assets and liabilities declared by the assesse based on which the proceedings were initiated. We hence set aside Annexures 10, 13 and 14. We make it clear that the Assessing Officer would be entitled to initiate fresh proceedings subject to just exceptions.

15. The writ petition is allowed leaving liberty as above.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-.

AFR/NAFR	AFR
CAV DATE	
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