OD – 3

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

WPO/943/2023

SHRI KALICHARAN AGARWALLA

-Versus-

OFFICE OF THE INCOME TAX OFFICER, WARD 44(2), KOLKATA AND ORS.

BEFORE :
THE HON'BLE JUSTICE MD. NIZAMUDDIN
Date : 16th May, 2023

<u>*Appearance :*</u>
Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Saurabh Bagaria, Adv.
Mr. Saumya Kejriwal, Adv.
Ms.Ananya Rath, Adv.
Mr.G.S. Gupta, Adv.
…for the petitioner.

Mr. Tilak Mitra, Adv.
Mr.Prithu Dudheria, Adv.
..for the respondent.

The Court : Heard the learned Advocates appearing for the parties. The petitioner has filed this writ petition challenging the impugned order dated 30th March, 2023 under Section 148A(d) of the Income Tax Act, 1961 relating to assessment year 2019-20 and the legality and validity of the subsequent notice under Section 148 of the said Act.

I have perused the aforesaid impugned order and considered the reasonings and findings given by the assessing officer based on material evidence and find that the same has been passed after recordings the submissions and objections of the petitioner. The main objection of the petitioner against findings and recording in the aforesaid impugned order is that the assessing officer does not have any material evidence against the petitioner and the documents provided to him does not corroborate the allegation and that no incriminating documents were provided to him and that the documents provided by the investigation wing to the assessing officer cannot be relied upon by the assessing officer.

Relevant reasons and findings of the assessing officer as recorded in paragraph 16 of the aforesaid impugned order are recorded as hereunder:

> "*From a perusal of the above submission it is clear that assessee had transactions with broker Anil Kumar Kasera. All documents received from Investigation Wing in respect of the assessee were forwarded to the assessee on 23/03/2023. The assessee has not commented on such documents forwarded.*
>
> *Investigation Wing has forwarded the assessee's specific documents and the evidences. These documents were shared with the assessee. Assessee filed his submission on 27.03.2023, he totally denied the above transaction and praying for drop the proceedings.*
>
> *The documents are absolutely reliable and the data supplied by the wing has been sent after analysis of the materials and evidence gathered during the search operation under section 132(1) of the Act. These documents not only carry the name of the assessee but also the symbols like Square/Rectangle/Triangle/Star/Circle/Tick*

Mark/Roman 'V' which are coded language as discussion in the report, sent by the wing and discussed initially in this order and the statements of Sri Praveen Kumar Kasera S/o Sri Uma Shankar Kasera, recorded u/s 132(4) of Income Tax Act, 1961 during the course of Search and Seizure Operation u/s 132 of I.T. Act, 1961 conducted on 30.11.2018. All these assessee related data leave no ground of doubt that the assessee was involved in the taking of cash loan as stated above.

In view of the report received and the submission of the assessee as above and after considering the same, I am of the view that income chargeable to tax has escaped assessment in the case of the assessee for the assessment year under consideration. Therefore, this is a fit case for issue of notice u/s 148 of the Income Tax Act, 1961, the income amounting to Rs.10,36,00,000/- chargeable to tax, represented in the form of entry or entries in the books of account (loan transaction) has escaped assessment in this case."

Considering the facts and circumstances of the case and the submissions of the parties and the aforesaid impugned order, I find that this is not a case which falls in those categories of cases where the impugned proceeding initiated is without jurisdiction or the authority who has initiated the impugned proceeding is having inherent lack of jurisdiction or that any procedural irregularity has been committed while passing the impugned order or there is any violation of principles of natural justice or the impugned proceeding is patently contrary to any provisions of law. On perusal of the aforesaid impugned order which is based on investigation and evidence collected, I find that huge number of incriminating documents showing that petitioner is involved in unaccounted cash transactions with one broker named Anil Kasera, amounting to several crores of rupees and the modus operandi adopted is that the loan recipient acknowledges the receipt of cash loan through a paper popularly known as 'Rukka' and the unaccounted cash transactions are authenticated through a currency note number mutually agreed before receiving/giving the cash and the place of collection/delivery of cash is decided through SMS/Whatsapp massages exchanged prior to the transaction and the currency note number and the amount are mentioned in those massages and the cash is collected or delivered by the broker's representative on the production of the pre-decided currency note number and the broker contacts the borrower on the due date of repayment of the loan and the loans are squared off or carried forward for a further specified period as per the mutual decisions of the parties involved and thereafter Rukka is destroyed on repayment of loan. Genrally, the borrower pays a fixed amount of commission/brokerage to the broker involved in the transaction and the general rate of brokerage is ranging from 1.5 to 2.4 per cent of the principal amount. It appears from record which the assessing officer has annexed to the notice under Section 148A(b)and order under Section 148A(d) of the Act that some of the documents which established the involvement of the petitioner in such type of transactions with the said Anil Kasera and there are names of many other persons who are involved in this type of transactions adopting same modus operandi. There is also finding of the assessing officer in the impugned order under Section 148A(d) of the Act that a sum of Rs.10.36 crore representing in the form of entry or entries in the books of account (loan transaction) has escaped income in this case.

All the aforesaid findings in the impugned order are based on material evidence which cannot be scrutinised by a writ court in exercise of its constitutional writ jurisdiction under Article 226 of the Constitution of India and be substituted with its own findings. Recently this Court has noticed that several writ petitions have been filed involving similar nature of huge unaccounted cash transactions where modus operandi is the same and involving the same broker Anil Kasera.

This court, in the facts and circumstances of the case and considering the nature of huge financial scam, is not inclined to entertain this writ petition by exercising its constitutional writ jurisdiction under Article 226 of the Constitution of India. The Principal Chief Commissioner of Income Tax, West Bengal & Sikkim is directed to refer this case along with all other cases involving Anil Kasera where similar modus operandi has been adopted relating to unaccounted cash loan, to the Enforcement Directorate (ED) and file compliance report before this Court on 13th June, 2023.

In view of the discussions made above, this writ petition being WPO No.943 of 2023 is dismissed, however, this matter will be listed on 13th June, 2023 as 'To Be Mentioned' for filing compliance report.

(MD. NIZAMUDDIN, J.)

S.Das/