IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10143 OF 2022

Deshi Daru Kirkol Vikri Dukan
Through its partner,
Vijay s/o Laxman Mahajan
Age: 65 years, Occ.: Business,
R/o. Gut No.1, Plot No.3, H.No.283, 284,
Tongaon Shivar, Tq. Bhadgaon,
Dist. Jalgaon-424101.
PAN No. AAJFD1013H ... **PETITIONER**

V/s.

1. Ministry of Finance through
Central Board of Direct Taxes
New Delhi.

2. The Income Tax Officer,
Ward No.-1(3), Jalgaon,
Income Tax Office,
B.J. Market, Jalgaon,
Tq. & Dist. Jalgaon.

3. The Principal Chief Commissioner of
Income Tax-1, Nashik.
Having its office at Aykar Bhavan,
Agra Road, Nashik. ... **RESPONDENTS**

...

Mr. Raviraj R. Chandak, Advocate for the Petitioner
Mr. S.W. Munde, Advocate for R/1-UOI
Mr. Alok Sharma, Advocate for R/2 & 3

...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 14th June, 2023

ORAL JUDGMENT (Per: Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The issue raised in this petition is as regards the issuance of notice under Section 148-A of the Income Tax Act and in relation to assessment of an amount which has escaped assessment and a period of three years is over, coupled with the fact that the amount is less than Rs. Fifty Lakhs.

3. In the case in hand, pertaining to a country liquor retail shop district Jalgaon, it is an admitted position that an amount of Rs.16,83,000/- escaped assessment in the assessment year 2017-2018. The case of the department is that this amount originates from an unexplained cash deposit in a bank during the de-monetisation period.

4. Since the amount at issue is undisputed, we do not intend to enlarge the size of this judgment by referring to the details thereof. It would suffice the purpose by referring to Section 148, 148-A which was inserted by the Finance Act, 2021 w.e.f. 01.04.2021 and Section 149 of the Income Tax Act which read as under:

> ***Section 148***. *Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in*

such notice, a return of his income or the incom of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may he apply accordingly as if such return were a return required to be furnished under section 139:

Provided *that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.*

Explanation 1.- For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,-
(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.-For the purposes of this section, where,-
(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied with the prior approval of Principal Commissioner or Commissioner, that any books of account or docu- ments, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which

suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.-For the purposes of this section, specified authority means the specified authority referred to in section 151]

Conducting inquiry, providing opportunity before issue of notice under section 148*.*

148A. *The Assessing Officer shall, before issuing any notice under section 148-*
(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) 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, with the prior approval of specified authority within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided *that the provisions of this section shall not apply in a case where,*
(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation. For the purposes of this section, specified authority means the specified authority referred to in section 151.]

***Section 149**. (1) No notice under section 148 shall be issued for the relevant assessment year-*
(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment."

***Provided** that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:*

***Provided further** that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:*

> ***Provided also*** *that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:*
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> ***Provided also*** *that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.*
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> *Explanation- For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.*
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> *(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.]*

5. Earlier, the notice under Section 148-A was an option available to the establishment to seek assessment of such escaped amounts which were chargeable to tax. With the introduction of Section 148-A, the Hon'ble Supreme Court laid down the law vide judgment dated 04.05.2022 in **Civil Appeal No.3005/2022 (Union of India and Others V/s. Ashish Agarwal)** and a group of cases, concluding that the notice under Section 148 shall initially be construed to mean a notice under Section 148-A. There is no dispute that this has been done in the present case. It is equally undisputed that the impugned order in the case in hand has been passed under Section 148-A (d), keeping in view the law laid down by the Hon'ble Supreme Court in the case of **Ashish Agarwal** (supra).

6. The present Petitioner has approached this Court for the reason that according to the establishment the amount that has escaped assessment, is Rs.16,83,000/-. If this is considered in the light of Section 149(1)(b), and as more than 3 years have lapsed and 10 years have not lapsed from the end of the relevant assessment year, assessment / re-assessment of the escaped amounts is permissible only if the escaped assessment amounts are more than Rs. Fifty Lakhs or are likely to amount to Rs. Fifty Lakhs for that particular assessment year. In the light of the impugned notice, the Petitioner has tendered two replies vide communication dated 08.06.2022 and 18.06.2022 under Section 148A. It is undisputed that in the replies filed by the Petitioner, a specific objection with regard to Section 149 was not raised and, therefore, the establishment passed an order on 27.08.2022 under Section 148-A (d). Thereafter, the Petitioner has been served with a notice under Section 148-A, dated 29.07.2022.

7. There is no dispute that the Petitioner did not raise an objection as regards Section 149 to the extent of the quantum of the amount which is alleged to have escaped assessment. It is equally undisputed that after the Petitioner has received the Section 148 notice, even now such objection can be raised and the authorities can consider the same before venturing into the entire exercise of carrying out an assessment, if that would be barred by the

effect of Section 149. The learned advocate for the Petitioner submits that he would raise such an objection forthwith. The learned advocate for the department submits that a reply may be filed by the Petitioner and this objection touching Section 149, would be considered peremptorily.

8. In these peculiar facts and circumstances as recorded above, this petition is **disposed off** with liberty to the Petitioner to submit it's written reply / objection to the impugned show cause notice in the light of Section 149 on or before 30.06.2023. The department would consider the replies / objections in the light of Section 149 and pass a reasoned order. If the said order is adverse to the Petitioner, the same would not be brought into effect until fifteen days from the date of the order, so as to enable the Petitioner to avail of a remedy as may be permissible in law. Needless to state, the order that would be passed by the department would be uploaded on its website and would be e-mailed to the Petitioner on its e-mail address which is registered with the department, on the same date of pronouncement. Needless to state, if there is any other mode of filing of the reply like '**Faceless assessment'** the said process can be followed.

9. Rule is discharged.

[Y.G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

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