

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

CWP-7713-2022

Date of Decision:-14.03.2023

Anita Gupta

....Petitioner

Vs.

Income Tax Officer and ors.

....Respondents

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Nikhil Goyal, Advocate,
Mr. Rana Gurtej Singh, Advocate
and Mr. Mukul Panpher, Advocate
for the petitioner

Mr. Yogesh Putney, Advocate
for the respondents.

Ritu Bahri, J.

The petitioner-assesee has approached this Court by filing the present writ petition for issuance of writ in the nature of certiorari for quashing notice dated 01.04.2022 (P-3) passed under Section 148-A of the Income Tax Act, 1961 (for short 'Act 1961').

The facts as stated in the petition are that respondent No. 1 signed a notice dated 20.03.2022 (Annexure P-1) stating that he has some information in possession that certain income with respect to Assessment Year 2018-2019 has escaped assessment, within the meaning of Section 147 of Act 1961, after taking approval from respondent No. 2 on 19.03.2022.

A notice under Section 148 A (b) of Act 1961 was served upon the petitioner on 26.03.2022 (Annexure P-2) by respondent No. 1. This notice was in fact served on the son of the petitioner after contacting him over a phone call and obtaining email-ID. Respondent No. 1 proceeded to pass an order on 01.04.2022

(Annexure P-3) under Section 148 A (d) of Act 1961 after seeking approval from respondent No. 2. Thereafter, a notice dated 01.04.2022 (Annexure P-4) was issued to the petitioner under Section 148 of Act 1961 by respondent No. 1 and the petitioner was directed to file a return of income within 30 days from the service of the notice. Hence, the present writ petition.

Petitioner is challenging notice on the following grounds:-

- (i) Firstly, the as per the amended procedure under the Finance Act, 2021, respondent No. 1 was bound to allow a minimum of 7 days to respond to the show cause notice after the same is served upon the petitioner on 26.03.2022.
- (ii) Secondly, as per Section 149 (1) (b) and Section 151 of Act 1961, respondent No. 1 was not competent to conclude the proceedings against the petitioner.
- (iii) Thirdly, notice had been issued on the e filing portal without any information to the petitioner. No opportunity of hearing was given to the petitioner before passing of impugned notice.

Learned counsel for the petitioner has referred to judgment of Jharkand High Court in a case ***of Jindal Forgings vs. Income Tax Department, (2022) 143 taxmann.com*** wherein the application filed by the petitioner was allowed which was for seeking quashing of letter passed under Section 148A (D) of the Income Tax Act, 1961 whereby it has been ordered that the case of the assessee is a fit case for issuance of notice under Section 148 of the Act for the assessment year. In this case, the petitioner had filed its return of income for the Assessment Year 2018-19, on 25-9-2018. The books of the petitioner were duly audited as per section 44AB of the Act. On 25-3-2022, a notice under clause (b) of section 148A of the Act was issued to the petitioner calling upon him to show-cause as to why notice under section 148 of the Act be not issued for the reasons stated in annexure to the notice dated 25-3-2022, In this notice the petitioner was

directed to ensure compliance on or before 28-3-2022. Even before lapse of seven days' time from 25-3-2022, on 31-3-2022 itself the Assessing Officer passed an order under section 148A(d) of the Act whereby inter alia it has been ordered that the case of the Assessee is a fit case for issuance of notice under section 148 of the Act for the Assessment Year 2018-19 and on 31-3-2022 itself notice has been issued.

Learned counsel for the respondent has referred to short reply of Manju Bala, Income Tax Officer, Ward I, Aayakar Bhawan, Sector 2, Panchkula wherein it has been stated that the Assessing Officer gave opportunity to the petitioner by issuing notice under Clause (b) of Section 148 of Act 1961 on 20.03.2022 (P-1). However, the petitioner-assessee neither filed any reply to the notice nor any application was filed seeking extension of time. Further it has been stated that the grievance of the petitioner that notice was served upon him on 26.03.2022 requiring him to response within one day i.e 27.03.2022, is without any basis, as the opportunity of being heard was provided to the assessee, as the notice was issued on 20.03.2022 at the address given on the PAN database through speed post. The petitioner herself admitted that the notice was served upon her on 26.03.2022. Reference was made to Clause (b) of Section 148 of Act 1961 and as per this clause, the petitioner could have filed an application for extension of time. But the petitioner neither filed any reply nor filed any application for extension of time. The order dated 01.04.2022 (P-3) has rightly been passed on 7th day as per Clause (b) of Section 148 of Act 1961.

On this very issue, Hon'ble the Supreme Court in a case of Principal Commissioner of *Income Tax, Mumbai vs. I-Ven Interactive Ltd, Mumbai (2019) 418 ITR 662 (SC)* held that issuance of notice at the address listed in the PAN database is sufficient compliance of issue of notice, and that in the absence of any

specific intimation to the Assessing Officer, the Assessing Officer would be justified in sending notice at the available address mentioned in the PAN Database.

Reference has further been made to judgment of Hon'ble the Supreme Court of India in a case of C.C. Alavi Haji vs. Palapetty Muhammed, reported as 2007 (6) SCC 555 wherein it has been held as under:-

Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawyer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice."

Reference has been made to judgment of this Court in a case of **Commissioner of Income Tax vs. Naveen Verma, 2012 (346) ITR 100 (P&H)**, wherein it was held as under:

"The above provisions are statutory recognition of the principles of natural justice which are applicable to assessment proceedings under the Act. The affected party is entitled to the fair opportunity and fair procedure. Since the period of 15 days has been specified statutorily, it may not be fair to expect filing of return in shorter period. At the same time, the effect of violation of the principles of natural justice is not to always nullify the exercise of jurisdiction unless prejudice is caused. Where period specified in the notice is less than the statutory period, no prejudice is caused if return filed is taken into account. The notice specifying lesser period can be read as specifying the statutory period. The principle is duly recognised under section 292B of the Act.

In State Bank of Patiala v. S.K. Sharma: [1996] 3 SCC 364. after considering the case law on the point. The Division Bench answered the questions in favour of the Revenue. It was held as under:

33. *We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):...*

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under- 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., Whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/Government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The

principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle."

Hon'ble the Supreme Court in the case titled as ***Banarsi Devi Vs. Income = Officer, Calcutta, reported as [1964] 53 ITR 100 (SC)*** has held that wider meaning of the word "issued" must be accepted. The Hon'ble Allahabad High Court in the case titled as ***Sri Niwas Vs. Income Tax Officer, reported as [1956] 30 ITR 381 (All.)*** has also interpreted the word "issued" to mean "served".

The procedure to be followed upon receipt of the Notice came to be considered by the Hon'ble Supreme Court in the case titled as ***GKN Driveshafts (India) Limited Vs. Income Tax Officer and Others, reported as [2003] 259 ITR 19 (SC)*** wherein it has been held as under:-

"However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years"

Heard learned counsel for the parties at length.

Reference at the very outset can be made to Section 148 A (b) of Act 1961, which reads as under:-

148A. The Assessing Officer shall, before issuing any notice under section 148,-

(b) provide an opportunity of being heard to the assessee, 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);"

In the present case, the petitioner was having the knowledge of notice on 26.03.2022 and she has not given any reply to the said show cause notice. Thus, the impugned order came to be passed on the 7th day i.e on 07.04.2022. The notice has been sent at the address given on the PAN Data base. The Assessing Officer initiated the proceedings in accordance with Section 148A read with Section 149/151. The approval of specified authority as per Section 151 of Act 1961 was obtained at every stage. The petitioner chose not to file reply to the notice and hence the notice issued on 20.03.2022 through speed post at the address given on the PAN Data base was sufficient to return a finding that the respondents had served the notice at the correct address. Moreover, petitioner herself has admitted that the notice was received on 26.03.2022.

The next question for consideration is that whether the petitioner having been served the notice at the correct address, the proceedings initiated for reassessment can be quashed. The answer is 'No'.

Further the case i.e *Jindal Forgings case (supra)* cited by learned counsel for the petitioner will not be applicable to the facts of the present case, as in that case only three days time was given to the petitioner to file reply. In the present case, the show cause notice was issued to the petitioner on 26.03.2022 (Annexure P-2) and on the 7th day itself, the impugned notice dated

01.04.2022 (P-3) was passed. The petitioner instead of filing reply chose to approach this Court.

Finding no merit, the writ petition is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

14.03.2023
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No