IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9506 of 2022 (O&M)
Date of decision: 05.05.2023

Bunty Khanna

.....Petitioner

Versus

Income Tax Officer and others

.....Respondents

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

Present: Mr. Nikhil Goyal, Advocate,
for the petitioner.

Ms. Gauri Neo Rampal, Senior Standing Counsel,
for the respondents..

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Ritu Bahri, J.

CM-12740-CWP-2022

Reply, filed on behalf of respondent No.2, is taken on record.

Misc. application stands allowed accordingly.

CWP No.9506 of 2022

Petitioner is seeking a writ in the nature of certiorari quashing the order dated 01.04.2022 (Annexure P-7) passed under Section 148A (d) of the Income Tax Act and notice dated 01.04.2022 (Annexure P-8) under Section 148 of the Income Tax Act on the ground that the respondents have not processed the application for surrender of PAN filed by the petitioner on 26.03.2014 (Annexure P-2).

As per petitioner, he is a regular income tax assessee and was allotted PAN ABJPK3615M by the Income Tax Department. However, due to some correction in PAN data undertaken by the petitioner, two PANs were issued. The second PAN was AFKPK8017L. The petitioner, thereafter, started filing his return of income on the PAN AKFPK8017L. After coming to know that petitioner was holding two PAN cards, he voluntarily filed an application dated 26.03.2014 (Annexure P-2) for surrender of PAN ABJPK3615M before respondent No.1. Keeping in view the above fact, petitioner received a letter dated 30.01.2016 (Annexure P-3) stating that return with respect to PAN ABJPK3615M had not been filed. Thereafter, the petitioner made a request on Centralised Public Grievance Redress and Monitoring System (CPGRAMS) before respondent No.3 on 14.08.2016 (Annexure P-4). The petitioner was under *bonafide* belief that application for surrender of PAN had been processed by respondent Nos.1 and 3. On 21.03.2022, the petitioner was issued a notice (Annexure P-5) under Section 148A (b) of the Income Tax Act to initiate re-assessment proceedings for the assessment year 2015-16. To the said notice, petitioner filed his reply (Annexure P-6) clarifying the fact that the aforesaid PAN had already been surrendered by him. Despite the clarification given by the petitioner vide his reply (Annexure P-6), respondent No.1 proceeded to conduct the assessment on the surrendered PAN by passing an order under Section 148A (d) of the Act (Annexure P-7). Thereafter, a notice dated 01.04.2022 (Annexure P-8) under Section 148 of the Act was also issued to the petitioner. Hence, the present petition.

Upon notice, reply dated 02.08.2022 on behalf of respondent No.2, has been filed, wherein it has been stated that the petitioner has approached this Court at a pre-mature stage, as the proceedings initiated are yet to be completed by the adjudicating authority. On merits, it is stated that the petitioner was holding two PANs i.e. AKFPK8017L and ABJPK3615M during the financial year 2014-2015 and he had filed his income tax return under the PAN AKFPK8017L. Although he is claiming to have intimated the department for surrender of PAN ABJPK3615M vide letter dated 26.03.2014, but the fact of the matter is that he was using this PAN during the financial year 2014-2015 with the Bank of Baroda and was maintaining the bank account No.26190500000034, attached with PAN ABJPK3615M. As per information available with the department, the assessee had made transactions of Rs.1,31,62,300/- in this bank account. The second pan was being intentionally used by the assessee for depositing unexplained cash generated by him. He had not declared the given bank account in his books. In this backdrop, case of the petitioner was re-opened on the basis of the information available on database of the department under PAN ABJPK3615M and the re-assessment is to be completed on the same PAN of the assessee. Copies of the information available on the Insight Portal and undisclosed bank account are attached as Annexures R-1 and R-2. It is further stated that petitioner is maintaining three bank accounts and details of the third account has not been reported by the assessee. The details of three bank accounts are given as under:-

Sr. No.	Bank	Address	Account No.	IFSC Code	Type
1.	Oriental Bank of Commerce	Sector 21	07442191021359	ORBC0100744	Saving
2	State Bank of Patiala		55141414195	STBP0000885	Saving
3	**Bank of Baroda**	Sector 44	26190100002160	BARBAGRCHA	Saving (Primary)

Details of the saving bank account in Bank of Baroda, Sector 44, in which transaction of Rs.1,31,62,300/- was done, had not been reported, which requires to be re-examined. It is believed that the cash deposited in this account is not from business proceeds, but it is the unexplained cash of the assessee from his undisclosed income.

The escaped income is more than Rs.50 Lakhs. Section 149 of the Income Tax Act is modified by Finance Act, 2021 and now any case can be reopened within three years from the end of relevant assessment year as per clause (a) of Section 149(1) of the Act, if the Assessing Officer has information, which suggests that income chargeable to tax has escaped assessment as prescribed in Explanation 1 to Section 148 and upto 10 years as provided in Clause (b) of Section 149 (1). The petitioner has alternative remedy under the Act as held by Hon'ble the Supreme Court in ***Commissioner of Income Tax and others vs. Chhabil Das Agarwal,*** (2014) 1 SCC 603, wherein it was held that the Income Tax Act, 1961 provides complete machinery for assessment/reassessment of tax. The assessee is not permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226.

Keeping in view the reply filed by respondent No.2 and the ratio of the judgment passed in ***Chhabil Das Agarwal's*** case, no ground for quashing of the impugned order is made out.

Resultantly, finding no merit, present petition is dismissed.

(RITU BAHRI)
JUDGE

05.05.2023
ajp

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No