

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

CWP-7875-2023

Date of Decision:-03.05.2023

Shashank Garg

....Petitioner

Vs.

Income Tax Officer, Ward I, Revenue Building,
HUDA Complex, Bhiwani

....Respondents

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

Present:- Ms. Radhika Suri, Sr. Advocate with
Mr. Abhinav Narang, Advocate and Mr. Siddhant Suri, Advocate
for the petitioner.

Ritu Bahri, J. (Oral)

The present petition is for issuance of writ in the nature of certiorari to quash the impugned notice dated 24.03.2023 issued under Section 148A (d) (P-1), order dated 31.03.2023 passed under Section 148A (d) (P-3) and impugned notice dated 31.03.2023 issued under Section 148 (P-4).

Issue notice of motion.

On asking of the Court, Ms. Gauri Neo Rampal, Sr. Standing counsel, accepts notice on behalf of the respondent.

Learned senior counsel for the petitioner is seeking quashing of the impugned notices/order on the ground that allegation of "liability of Rs.34,91,91,634/- towards a single party i.e M/s Dholagiri Enterprises" was not incorporated in the show cause notice dated 24.03.2023 (P-1) despite the fact that the same was well within the knowledge of respondent No. 24.03.2023. Thus, the respondent had not observed any escaped income on this allegation. Further in the order dated 31.03.2023, no income has been alleged to have been escaped on the allegation "inadmissible claim of expense value of Rs.34,91,91,634". Further in the order dated 31.03.2023, there is no reference of the reply given by the petitioner on 26.03.2023 (P-2).

Reference has been made to judgment of Delhi High Court in a case of

***Catchy Prop-Build Pvt. Ltd vs. Assistant Commissioner of Income Tax and
ors. passed in W.P No. (C) 13734-2022, decided on 17.10.2022 (P-5)***

whereby the petitioner was seeking quashing of show cause notice dated 16.03.2022 and 31.03.2022 on the ground that the same were passed in violation of the provisions of Section 148 A (b) of the Act as it merely states that the transaction entered into by the petitioner and does not contain any allegation of escapement of income. The writ petition was allowed and impugned notices were set aside, on the ground that if the foundational allegation is missing in the notice issued under Section 148 A (b) of the Act, the same cannot be incorporated by issuing a supplementary challan. However, liberty was granted to the department to take steps in accordance with law.

Similarly in a case of ***Excel Commodity and Derivative Pvt. Ltd vs. Union of India and others, passed in APOT/132/2022, decided on 29.08.2022 (P-6)***, Hon'ble Calcutta High Court was examining a case of a appellant/assessee who was issued notice under Section 148 A (b) of the Act on the allegation that the appellant has done fictitious derivative transactions with M/s Blueview Tradecome Pvt. Ltd. The assessee submitted the reply to the said notice enclosing all the relevant documents in support of the claim to justify that they have not indulged in fictitious transaction. The writ petition was allowed and it was observed that the assessing officer has submitted the explanation to the notice along with documents in support their claim. The Assessing Officer has given up the said allegation which formed the basis of the notice and proceeded on a fresh ground for alleging that the transaction with some other company was an accommodation entry. The impugned order was set aside as it was passed without giving any opportunity to reopen the matter on a different issue.

Learned counsel for the respondent has filed reply dated 02.05.2023 of ITO Ward-I. Bhiwani in the Court today and the same is taken on record. As per the reply, the verification details uploaded on the insight portal by the DDIT (Inv), Rohtak was also provided to the assessee along with show cause notice. The assessee sought an adjournment on 19.03.2023 for 15 days. The assessee gave its reply on 26.03.2023 in which he did not deny about the said transaction of Rs. 34,91,91,634. In para No. 4 of the reply, it has been stated that the transaction amount of Rs. 34,91,91,634/- was mentioned in both the show cause notices dated 12.03.2023 and 24.03.2023. But the assessee never filed any reply refuting the said transaction.

It is not in dispute that the reply is silent on the fact that how the reply given by the petitioner was dealt with while passing the impugned order dated 31.03.2023 (P-3). It is also not in dispute that now on 01.05.2023, the verification report dated 18.06.2021 has been uploaded on the portal of DDIT, Rohtak. Further in the initial notice dated 24.03.2023 (P-1), it had not been reflected the amount received from M/s Dholagiri Enterprises. Thus, the petitioner has no occasion to file reply on that effect.

Since the above verification report was never part of the impugned show cause notice and keeping in view the above mentioned judgments, the present petition is allowed and notice dated 24.03.2023 issued under Section 148A (d) (P-1), order dated 31.03.2023 passed under Section 148A (d) (P-3) and impugned notice dated 31.03.2023 issued under Section 148 (P-4) are set aside. However, liberty is granted to the respondent to proceed against the petitioner in accordance with law, if so advised. The petitioner is also at liberty to take its remedies in accordance with law.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

03.05.2023
G Arora

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