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

1. CWP-8099-2023

Satvir Kaur ....Petitioner

Vs.

Union of India and & Ors. ....Respondents

2. CWP-8018-2023

Jasvir Kaur ....Petitioner

Vs.

Union of India and & Ors. ....Respondents

3. CWP-8055-2023

Rajinder Kaur ....Petitioner

Vs.

Union of India and & Ors. ....Respondents

Date of Decision:-20.04.2023

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

**Present:-** Mr. Sandeep Goyal, Advocate,
Mr. Rishabh Singla, Advocate
for the petitioner (s).

**Ritu Bahri, J. (Oral)**

The present petition is for issuance of writ in the nature of prohibition restraining respondent No. 2 from proceeding ahead with the proceedings in pursuance to the order dated 28.03.2023 (P-8) passed under Section 148A (d) and subsequent notice dated 28.03.2023 (P-10) issued under Section 148 for Assessment year 2016-17. However, for facility of reference, the facts are being taken from CWP-8099-2023.

Issue notice of motion.

GAURAV ARORA
2023.05.01 12:06
I attest to the accuracy and
authenticity of this order/document
P&H HC, Chandigarh

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

Brief facts of the case are that Satvir Kaur (petitioner in CWP No. 8099-2023), Rajinder Kaur (petitioner in CWP No. 8055-2023) and Jasvir Kaur (petitioner in CWP No. 8018-2023) purchased an agricultural land on 05.03.2014 for an amount of Rs.55,00,000/- and they also deposited Rs.7,81,200/- which includes stamp duty social security fund and infrastructural fund. The copy of registered sale deed dated 05.03.2014 is Annexure P-1. This land was subsequently sold by the petitioner on 26.10.2015 (P-4) along with co-owners for an amount of Rs.1,96,87,500/- in which share of each co-owner comes to Rs.65,62,500/-. Since the sale of agricultural land was exempted from tax, the petitioner did not file any income tax return. Now on 21.02.2023 (P-5), the petitioner received an order under Section 127 (5) passed by Principal Commissioner of Income Tax-I, Jalandhar transferring the PAN of the petitioner from Hoshiarpur to respondent No. 2. Vide notice dated 12.03.2023 (P-6), the petitioner was asked to file its response on or before 18.03.2023. The petitioner gave her reply on 18.03.2023 (P-7). But now respondent No. 2 passed order dated 28.03.2023 under Section 148A (D) (P-8 to P-10) that since the petitioner has not file any return of income for the year under consideration, an income of Rs.65,62,500/- has escaped assessment in the hands of the petitioner. Hence, the present writ petition.

On 19.04.2023, this Court passed the following order in CWP NO. 8018-2023:-

> *"Learned counsel for the petitioner, inter alia, contends that vide sale deed dated 05.03.2014 (Annexure P-1), which was registered in the office of Joint Sub-Registrar, Majri (S.A.S. Nagar, Mohali), petitioner along with Smt. Rajinder Kaur and Smt. Satvir Kaur, had purchased agri-cultural land on 05.03.2014. However, the sale deed was not produced*

*by the petitioner when re-assessment proceedings qua this very land were initiated. On account of non furnishing this document, the impugned order dated 30.03.2023 has been passed and it has been held that income of Rs.65,62,500/- has escaped the assessment.*

*In the present case, in response to the notice under Section 148A of the Income Tax Act, the petitioner filed reply dated 26.03.2023. However, in this reply, date of purchase of the aforesaid land has not been mentioned.*

*Notice of motion for 20.4.2023."*

At the very outset, learned counsel for the petitioner while referring to Section 149 of the Income Tax has stated that the proceedings in question are barred by limitation. Further the petitioner along with co-owners had purchased the land for an amount of Rs.55,00,000/- on which stamp duty, Social Security Fund and Infrastructure Fund of Rs.3,34,800/-, Rs.3,34,800/- and Rs.1,11,600/- respectively were paid. The said land was then sold for an amount of Rs.1,96,87,500/-and the share of each co-owner comes to Rs.65,62,500/-.The share of each co-owner on account of purchase would come to Rs.20,93,733/-. If the said amount is deducted from the amount of sale consideration, then the alleged escaped income, if any, would come to Rs.44,68,767/- which is less than Rs.50,00,000/- and as per provision of Section 149 (1) (b), the limitation period of ten years is applicable only if the escaped is more than Rs.50 lacs. Therefore, the case of the petitioner would fall under the provisions of Section 149 (1) (a) for which limitation period was three years and that has already expired.

The provisions of Section 149 of the Income Tax Act,1961 reads as under:-

**Time limit for notice.**

***149.*** *(1) No notice under section 148 shall be issued for the relevant assessment year,—*

*(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);*

*(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one 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.*

*Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.*

*(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.*

*(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.*

*Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.*

Without going in to the merits of the case and keeping in view the fact that inadvertently the date of purchase of the aforesaid land has not been mentioned by the petitioner in her reply, the present petitions are allowed. The impugned order dated 28.03.2023/30.03.2023 and consequent notices are set aside. The matters are remanded back to the respondent-authorities to pass a fresh order by taking into account the registered sale deed (P-1). A direction is given to the petitioner (s) to produce the certified copy of registered sale deed (P-1).

**(RITU BAHRI)**
**JUDGE**

**(MANISHA BATRA)**
**JUDGE**

**20.04.2023**
**G Arora**

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