IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111) **CWP-20036-2023**
Decided on : 30.11.2023

Harbinder Singh ……Petitioner(s)

Versus

Union of India & another ……Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.Malkiat Singh, Advocate for the petitioner (s).

G.S. Sandhawalia, J. (Oral)

1. Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India is to the assessement order dated 16.12.2019 (Annexure P-4) passed by respondent No.2 for the Assessment Year 2017-18.

2. The case made out by the petitioner is that the reply filed on 17.07.2018 (Annexure P-3) to the show cause notice dated 05.06.2018 issued under Section 148 of the Income Tax Act, 1961 (for short, the 'Act') was not taken into consideration. Resultantly, prayer for quashing of the order dated 24.01.2022 (Annexure P-7) whereby an order under Section 271AAC(1) of the Act had been passed has been sought to be made out wherein penalty of Rs.1,60,293/- being the 10% of the taxable amount of Rs.16,02,937/- was levied and the necessary demand notice was issued.

3. A perusal of the notice of demand under Section 156 of the Act would go on to show that opportunity was given to file an appeal under Part A of Chapter XX of the Act. Without taking recourse to the statutory remedy of filing an appeal under Section 246 provided under the Act, the writ petition has been filed. We are of the considered opinion that the petitioner had been duly put to notice for the amounts which were shown credited in his bank to the tune of Rs.20,75,000/- which were during the demonetization period. The explanation given that he is an agriculturist and had filed returns and the prayer for dropping the proceedings was rejected vide order dated 16.12.2019 (Annexure P-4) by recording that no explanation had been given regarding the source of cash deposit in response to the notice.

4. The agriculture income of Rs.6,14,097/- has been shown in the return filed but entry of the land holding in J-Form has not been furnished and therefore, the claim of agricultural income was rejected. The amount deposited was determined in the returned income under the provisions of Section 69A read with Section 271AAC of the Act and thus the penalty proceedings had also been initiated separately. Apparently the said order was never subject matter of challenge and it was only when the penalty proceedings had been initiated on 24.01.2022, the writ jurisdiction of this Court has been invoked.

5. Accordingly, we are of the considered opinion that the argument which has now been sought to be raised as to whether the amount belonged to the petitioner himself while referring to the bank statement (Annexure P-10) is not liable to be taken into consideration. It was for the petitioner to raise the same in his defence upon the notice which was served upon him and convince the authorities. Having failed to take the said defence, he cannot be allowed to take it for the first time in writ proceedings under Articles 226/227 of the Constitution of India. It is settled principle that Writ Court is not to enter into disputed arenas keeping in view the statutory remedy available under the provisions of the Act and the petitioner having failed to avail the said remedy, the writ jurisdiction cannot be invoked. The consequential proceedings are in the nature of penalty and therefore, we do not wish to comment upon the fact that the petitioner had an alternate remedy also against the primary order. In such circumstances, we do not exercise our extraordinary writ jurisdiction.

6. Resultantly, in view the above discussion, the present writ petition is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

30.11.2023
sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No