IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116 CWP-27961-2023 (O&M)

Date of decision: 14.12.2023

Ranbir Singh Behniwal …Petitioner

Vs.

National Faceless Assessment Centre and others ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

HON'BLE MS. JUSTICE LAPITA BANERJI

Present:- Mr. Pankaj Jain, Senior Advocate with
Mr. Divya Suri, Advocate,
For the petitioner.

Ms. Gauri Neo Rampal Opal, Sr. Standing Counsel,
For the respondents.

****

G.S.Sandhawalia, J. (Oral)

Petitioner seeks the quashing of various proceedings initiated under the Income Tax Act, 1961 (for short 'the Act') including the notice under Section 148-A (b) of the Act, dated 13.03.2023 (Annexure P-8) and order under Section 148A(d) dated 28.03.2023 (Annexure P-10) along with notice of even date under Section 148 (Annexure P-11) and all consequential proceedings arising therefrom.

2. A perusal of the paper book would go on to show that issue pertains to the Assessment Year 2019-2020. The petitioner had filed his return on 30.08.2019 (Annexure P-1). Notice was issued on 02.01.2023 (Annexure P-2) under Section 131 (1A) of the Act, requiring him to attend the camp office at Amritsar. Detailed reply (Annexure P-3) was given on 08.02.2023. Certain explanations were given by the assessee regarding transactions of exchange of land which had taken place with M/s Veer

Builders and Colonizers Pvt. Ltd. The factum of an FIR No.57 dated 25.04.2017 under Sections 452, 342, 427, 148, 149 IPC along with the fact that there is a dispute of the Alpine Education Society with the office bearers, who were also sought to be part of the civil proceedings, is also pending regarding the land which had been sold. Apart from the fact, there was reference to other two FIRs bearing No.173 dated 18.11.2017 under Sections 420/120-B of IPC and FIR No.29 dated 17.04.2018 under Sections 465, 467, 468, 471, 420, 120-B of IPC. The plea taken was that the transfer deed as such had been allegedly signed while they were in custody. Similar reply was also filed on 15.02.2023 (Annexure P-5) in response to a notice dated 13.02.2023 (Annexure P-4), where explanation was given that cheque was deposited in his account by his father and not by the Director of the Veer Builders and Colonizers Private Limited. Issue as such pertaining to FIR with regard to settlement of the accounts regarding the sale of agricultural land and the share in the HUF, had been explained thereunder.

3. Resultantly on 07.03.2023 (Annexure P-6) notice under Section 148A(a) was served upon the petitioner, wherein it was highlighted that petitioner had exchanged the land with M/s Veer Colonizers with a difference of Rs.2,70,93,276/-, in consideration which is taxable income under the head of 'income from other sources'. There was also a credit of Rs.4,52,89,624/- which had been deposited in his bank account and resultantly explanation was asked as to how tax liability on the earlier occasion had been discharged by him.

4. Vide notice dated 13.03.2023 (Annexure P-8), under Section 148A of the Income Tax Act, 1961, petitioner was put to notice that income chargeable to tax for the assessment year 2019-20 had escaped assessment

within the meaning of Section 147 of the Income Tax Act and replies which had been furnished on 12.03.2023 and 08.03.2023 had not verified the said facts.

5. Resultantly, order dated 28.03.2023 (Annexure P-10) under Section 148 A(d) was passed that the exchange of land amounted to liability of tax on capital gains both long term and short term which were not paid. The response as such received on 12.03.2023 was taken into consideration that certain amounts have been considered twice and calculated figure was Rs.4,52,89,624/-. Resultantly the assessing authority came to the conclusion that sources of Rs.1,25,00,000/- and Rs.1,23,00,000/-credited in the account maintained with the HDFC Bank and Central Bank of India have been explained by the assessee. However, deposited balance of Rs.2,04,07,574/- also remained unexplained.

6. Further it was held that returned income of Rs.3,98,860/- as declared by the assessee in his ITR filed for Assessment Year 2019-2020 did not commensurate with the deposits found credited at Rs.2,04,85,440/- (2,04,07,574+77,866) in the bank account of the assessee. Resultantly, income of Rs.4,75,78,716/- had escaped assessment for Assessment year 2019-2020 and order under section 148A(d) has been passed by the assessing authority by noting that prior approval of the specified authority i.e. Pr. CIT, Jalandhar had been taken.

7. On 25.08.2023 and 20.09.2023 (Annexures P-14 and P-15) notices under Section 142(1) of the Income Tax Act, 1961 were issued wherein information of specific amounts in respect of exchange of land and capital gain on land amounting to Rs.3,53,00,000/- and Rs.2,70,93,276/-

respectively and unexplained credit amounting to Rs.4,47,99,474/-in the bank as such were asked for.

8. Show cause notice under Section 144 of the Act dated 19.10.2023 (Annexure P-15) was also served by the Assessing Authority to the petitioner that he had already been confronted about the information available as recorded above and had failed to submit his response.

9. The petitioner apparently filed an objection (Annexure P-16) that he was not aware of the notices issued earlier while referring to the notice dated 19.10.2023 (Annexure P-15) under Section 144 and asked for information regarding sanction from the PR. CIT, Jalandhar.

10. In principal, the argument now raised is also of jurisdiction to the extent that the assessee's address is of Amritsar and notice was not issued by the Assessing Officer, Amritsar but rather by the Assessing Officer, Jalandhar. As discussed above, we have already noticed that *per se* initial notice was issued way back on 02.01.2023 (Annexure P-2) and had been duly replied on 08.02.2023 and thus the same does not lie in the mouth of the petitioner that he was not aware of the earlier proceedings. At this stage, to argue he was not aware about the notice issued is without any basis, rather he has been putting forth his explanation on the ground that there is another litigation between the family members and in such circumstances, the petitioner's objection as such was disposed of on 09.11.2023 (Annexure P-17).

11. On an earlier occasion, it has also been noticed that the assessee failed to comply with the notice issued under Section 142 (1) on 25.08.2023 and 20.09.2023 asking for information which we have already earlier referred to.

12. Resultantly on 09.11.2023 (Annexure P-17), petitioner was put to notice that all the notices have been served upon him and he has been given 7 notices, starting from 28.03.2023, but he had failed to reply to all the notices. The details of which read as under:

Sr No	*Notice u/s*	*Date of Issue*	*E-mail id to which notices was served*	
1	*148*	*28.03.2023*	*behniwalranbirasr@gmail.com*	*Cabalbir001 @ gmail.com*
2	*Intimation*	*17.08.2023*	*behniwalranbirasr@gmail.com*	*Cabalbir001 @ gmail.com*
3	*142(1)*	*25.08.2023 2*	*behniwalranbirasr@gmail.com*	*Cabalbir001 @ gmail.com*
4	*142(1)*	*20.09.2023*	*behniwalranbirasr@gmail.com*	*Cabalbir001 @ gmail.com*
5	*Letter*	*03.10.2023*	*behniwalranbirasr@gmail.com*	*Cabalbir001 @ gmail.com*
6	*144*	*19.10.2023*	*behniwalranbirasr@gmail.com*	*Cabalbir001 @ gmail.com*
7	*Centralized Communication*	*26.10.2023*	*behniwalranbirasr@gmail.com and through speed post JA500375421IN*	*Cabalbir001 @ gmail.com*

"It can be seen that all the notices were served on the same mail id against which you have replied in response to the notice u/s 144 of the IT Act, 1961. The status of service of notices is showing "delivered". You have thus, actually failed to reply all the notices though they were well delivered to you."

13. Resultantly, conclusion is that another option was given to him to comply with above-mentioned notices before 16.11.2023 and various

opportunities were given and that no further opportunity will be allowed as he has already been asked to file the complete reply along with the supporting documents. Apparently, thereafter on 15.11.2023 (Annexure P-18), the petitioner has now raised the issue of jurisdiction and prayed that he may be permitted to explain the matter through Video Conferencing.

14. Keeping in view the above mentioned facts, we are of the considered opinion that it is not a case where extraordinary writ jurisdiction is liable to be invoked. There are various provisions under the Act whereby the petitioner can seek his remedy. As noticed, the assessing officer has already given him benefit of the explanation of the credits of Rs.2,48,00,000/- which he had duly explained. It is not for this Court to take on the role of the assessing authority and to scrutinize the documents and as to whether value of the land which was duly exchanged, was higher or lower. It is for the petitioner to satisfy the authorities and it is not for the writ court to adjudicate upon the disputed question of facts, which petitioner has sought.

15. The principles governing the provisions have been crystallized on several occasions by the Apex Court that once there is an alternative remedy, it is not for the writ court under extra ordinary writ jurisdiction to adjudicate until there is a breach or violation of principal of justice or fundamental rights or the vires of Statute. In the present case, we find that there is no such jurisdictional issue which can now be sought to be raised, at a belated stage, as now contended.

16. After having not responded to various notices, and having gotten wiser over a period of time, we do not find it a fit case to exercise our powers of extraordinary writ jurisdiction. The writ petition is hereby

dismissed with liberty to the petitioner to avail his alternate remedy, in accordance with law, under the Act whereby he can file appropriate applications for revision, rectification and appeal.

17. Dismissed.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

December 14, 2023
Vandana

Whether speaking/reasoned: Yes
Whether reportable: Yes