IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9206 of 2023

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Narayan Kumar Son of Ram Chandra Prasad Resident of Ward No. 01, Shanker Chowk, Dumra, Sitamari, Bihar.

... ... Petitioner/s

Versus

1. The Principal Chief Commissioner of Income Tax Bihar, Patna.
2. The Deputy Commissioner of Income Tax, Circle-1, Muzaffarpur.
3. The Assistant Commissioner of Income Tax, Circle-1, Muzaffarpur.
4. The National Faceless Assessment Centre, Assessment Unit New Delhi through the Assessing Authority.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mrs. Archana Sinha, Sr. SC. Income Tax Dept.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-04-2024

The petitioner, an assessee under the Income Tax Act, 1961 (for brevity, the Act) is aggrieved with an assessment order passed after a notice issued under Section 148 of the Act.

2. We have heard the learned Counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the department.

3. The assessment relates to the year 2017-18, for which period the petitioner had filed a return on the due date itself, which is produced as Annexure-1. Later in the year 2021, the petitioner received a notice under Section 148 of the Act

produced as Annexure-2. The petitioner filed the very same return furnished earlier, as is seen at Annexure-3. Later, after about five months, the petitioner received Annexure-4 notice under Section 142(1) of the Act. It was in the said notice that for the first time, the petitioner was informed of an information pertaining to the financial years 2015-16 and 2016-17, in relation to sales made by one M/s Aryan Trading Company. The notice indicated that according to the enquiry report, the sales made by M/s Aryan Trading Company was bogus and the purchases made from the said entity, by the petitioner, amounting to Rs.50,40,218/- was liable to be added to the total income of the petitioner.

4. The petitioner replied as per Annexure-5, asserting that he had no business dealings with M/s Aryan Trading Company. It was also asserted that there was no material in the hands of the assessing authority, which could lead to a notice under Section 148 and in that circumstance, the proceedings initiated would be within the definition of a ‘mere change of opinion’, which is not permissible as has been held by the Hon’ble Supreme Court.

5. Annexure-5 reply filed by the petitioner was dated 01.12.2021, and later, on 19.05.2022 the petitioner was

issued with Annexure-6 notice based on the judgment of the Hon’ble Supreme Court in **Union of India & Ors. v. Ashish Agarwal; (2023) 1 SCC 617**.

6. The subject matter of the cited decision was the substituted Sections 147 to 151 of the Act; by the Finance Act, 2021, which came into force on 01.04.2021. There were many notices issued to the respective assessees post 01.04.2021, under the erstwhile Sections 148 to 151. The Hon’ble Supreme Court allowed the appeals of the Union of India permitting proceedings to be continued, by treating the Section 148 notices issued, which was based on the unamended provisions, deeming it to be issued under Section 148-A of the Act as substituted with effect from 01.04.2021. The Assessing Officers were directed to provide to the respective assessees, information and material relied upon by the revenue within 30 days, so that the assessee can reply to the show-cause notice within two weeks thereafter.

7. The above decision of the Hon’ble Supreme Court prompted the department to issue Annexure-6 notice. Again in Annexure-6 notice, there was a mere statement that information pertaining to one M/s Aryan Trading Company was received by the department from “Special Commissioner of

Revenue, Bureau of Investigation, South Bengal and Nodal Officer, Enforcement". It was based on this information indicated, that the transactions of M/s Aryan Trading Company for the assessment years 2017-18 were found to be bogus. There was also a list of beneficiaries attached, which included the petitioner and, hence for the assessment year 2017-18, an amount of Rs. 50,40,218/- was sought to be included in the total income. Again, we have to notice that there was no information supplied to the petitioner as would be required as per the decision of the Hon'ble Supreme Court, cited above, which required providing of the information and material relied upon by the revenue to the respective assessees.

8. The petitioner was then issued with a notice under Section 148-A(d) as is seen from Annexure-7, and then a notice under Section 148 at Annexure-8, which was followed up with Annexure-10 notice issued under Section 142(1) leading to the assessment order produced as Annexure-14. The objections filed by the petitioner were not considered is the contention of the petitioner nor was there any supply of the relevant information and material.

9. The counter affidavit of the respondents also does not indicate any information or materials supplied other

than informing the petitioner that the tax authorities in West Bengal found a registered entity in that State to be a bogus one with bogus transactions and that the said bogus entity had transactions with the petitioner amounting to sales of more than Rs. 50 lakhs. There is nothing stated as to what was the goods purchased, the dates on which such purchases were made, the invoices relating to the same and any documentary evidence of whatever materials were recovered in the State of West Bengal, which establish that the entity in West Bengal, a bogus one, had transaction with the petitioner.

10. More importantly, the petitioner was also not confronted with any evidence establishing his transactions with that bogus entity but for the mere statement that the Special Commissioner of Revenue, Bureau of Investigation, South Bengal had passed on some information. Even the information passed on has not been relayed or communicated to the petitioner. We are clear in our minds that there is no supply of information and material as is required in **Ashish Agarwal** (supra).

11. We specifically queried the learned Senior Standing Counsel as to the grounds on which the assessment is made. The learned Senior Standing Counsel would only say that

the reason which prompted the proceedings, is the bogus transactions of one M/s Aryan Trading Company, and information supplied to the department from West Bengal. The learned Senior Counsel would also take us to one paragraph of the order produced as Annexure-19, which is extracted hereunder:-

> *The assessee was issued show cause notice dated 27.05.2023. The assessee vide reply dated 28.05.2023 submitted details of partywise purchases. However, these details do not contain the PAN of the parties. Therefore, it was not possible to establish their genuineness. The assessee was provided with an opportunity to present its explanation vide video conferencing on 29.05.2023. The assessee attended the VC and after VC submitted its reply dated 29.05.2023, the purchase register, freight charges ledger and carriage & transport ledger. However, the purchase register only contains the name of the parties and not the PAN. Therefore, it is not possible to establish the genuineness of these transactions. Although, this list does not contain the name of M/s. Aryan Trading Company but due to non availability of the PANs of the parties mentioned in the list it cannot be confirmed whether these transactions have taken place or not.*

12. Admittedly, the books of accounts of the

assessee were produced. There is no co-relation between the transactions alleged against M/s Aryan Trading Company and that found in the petitioner's books of accounts. The mere statement that the petitioner has not stated the PAN No. does not take the department anywhere, since the PAN No. of M/s Aryan Trading Company was also not supplied to the petitioner by the department.

13. The order does not indicate the name of M/s Aryan Trading Company having been shown in the books of accounts of the petitioner. If purchases were questioned, the department ought to have looked at the invoices of the petitioner to get the PAN Nos. or directed the petitioner to furnish the PAN Nos. of the suppliers; whose transactions could be linked to those supplies/fraudulent transactions of M/s Aryan Trading Company. For that definitely, the transactions of M/s Aryan Trading Company on the various dates, with the value of the invoices, should be available and co-related with the books of accounts of the petitioner. This exercise has not been carried out by the department.

14. There is absolutely no reliable material, which the department has obtained for the purpose of initiating proceedings under Section 148 of the Act. No such material has

been supplied to the assessee to get his response on the same. As we noticed above, the report of the Special Commissioner was also not given to the assessee and it is not produced in the present writ proceedings by the department. The petitioner's contention all through has been that he has no business transactions with M/s Aryan Trading Company and he cannot be asked to prove the negative.

15. We find the proceeding under Section 148-A of the Act to be a clear abuse of process of law and not coming within the scope and ambit of Section 148. The assessment order, hence, is set aside and the writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J):

(Harish Kumar, J)

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AFR/NAFR	
CAV DATE	08.04.2024.
Uploading Date	
Transmission Date	