IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 3522 of 2024

M/s. P.K. AGARWALA, (a Partnership Firm), having its principal place of business at Rakha Copper Projects, Jadugora, Jamshedpur, P.O. and P.S Jadugora, Town Jamshedpur, District East Singhbhum-832106 (Jharkhand), through one of its Partners, namely, Pradeep Kumar Agarwal, aged about 58 years, son of Baijnath Agarwal, resident of Village Matigada, Shwaspur, Rakha Copper Projects, P.O. & P.S. Shwaspur, District East Singhbhum-832106 (Jharkhand).

..... Petitioner

Versus

1. **The Union of India**, through the Principal Chief Commissioner of Income Tax (Bihar & Jharkhand), Patna, having its office at First Floor, Central Revenue Building, Beerchand Patel Path, Patna, P.O.- G.P.O., P.S. Kotwali, Town and District Patna-800002 (Bihar).
2. **The Principal Commissioner of Income Tax**, Jamshedpur, having its office at 47, Circuit House Area, Golmuri, Town Jamshedpur, Golmuri, District East Singhbhum-831001 (Jharkhand).
3. **The Deputy Commissioner of Income Tax/Assistant Commissioner of Income Tax** (DCIT/ACIT), Circle-I, Jamshedpur, having its office at 47, Circuit House Area, Golmuri, Town Jamshedpur, District East Singhbhum-831001 (Jharkhand). ..... Respondents

CORAM: **HON'BLE The CHIEF JUSTICE**
HON'BLE Mr. JUSTICE DEEPAK ROSHAN

For Petitioner : Mr. Sumeet Kumar Gadodia, Advocate
Mr. Prakhar Harit, Advocate.

For Respondents : Kumar Vaibhav, Advocate.

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CAV On 09.12.2024. **PRONOUNCED ON: 17/12/2024**

Per Deepak Roshan, J.

Heard learned counsel for the parties.

2. In this writ petition the petitioner has assailed the order dated 29.03.2024 passed by the 3rd Respondent under Section 148A(d) of the

Income Tax Act, 1961 (for short 'Act'), wherein an order has been passed for initiation of re-assessment proceeding against the petitioner pertaining to Financial Year 2018-19 corresponding to Assessment Year 2019-20.

The petitioner has further prayed for setting aside the Notice dated 29.03.2024 issued by 3rd Respondent, wherein re-assessment proceeding has been initiated against this petitioner on the ground of escaped assessment within the meaning of Section 147 of the Act.

3. The brief fact of the case as per the pleadings is that the writ petitioner was issued a show cause notice under Section 148A(b) of the Act and was show caused as to why proceeding for re-assessment under Section 148 of the Act be not initiated against the petitioner on the allegations levelled, namely;

(i) Petitioner is a beneficiary of alleged bogus entries provided by one M/s. Everett Infra and Engineering Equipment Private Limited,

(ii) Petitioner made cash withdrawal of Rs. 2,94,25,000/- and it was directed to disclose the source of said fund, and

(iii) Petitioner made time deposit of Rs. 26,51,899/- and it was directed to explain the source of deposit of the said fund.

4. In the said show cause notice, there was mention of enclosure of an Investigation Report, but said Investigation Report was not annexed along with the said notice. Accordingly, on the date fixed on 04.03.2024, petitioner demanded a copy of the Investigation Report

being relied upon on the basis of which show cause notice was issued. Thereafter, on 12.03.2024, respondent allegedly supplied Investigation Report to the petitioner, but it is the case of the petitioner that no Investigation Report was supplied, and, next date was fixed on 15th March, 2024 i.e. within three days.

5. Since petitioner was not supplied with the Investigation Report on 15th March, 2024, it again requested for supply of Investigation Report and, ultimately, vide Letter dated 17th March, 2024, 3rd respondent furnished a copy of Investigation Report to the petitioner and directed to submit its reply by 19th March, 2024 and it was stated that no further adjournment/extension would be allowed to the petitioner.

6. Since only a short time of two days was given to the petitioner to submit its reply after receipt of the Investigation Report, petitioner on 19th March, 2024 demanded seven days' time for replying to the show cause notice, but vide Notice dated 20th March, 2024, 3rd respondent directed the petitioner to submit its reply by 11.30 A.M. on 22nd March, 2024, failing which, it was indicated that appropriate order would be passed.

7. At this stage, it is important to indicate that in the said notice dated 20th March, 2024, a new allegation was added in show cause notice with respect to time deposit of Rs. 3,91,08.021/- made by petitioner and it was directed to explain the same.

8. Petitioner again requested for seven days' time to file its reply considering the new allegation levelled against it on 20th March, 2024 and, consequent thereof, a final opportunity vide Notice dated 22nd March, 2024 was granted by the 3rd respondent to file its reply by 11.00 A.M. on 25th March, 2024.

9. It is pertinent to mention here that 23rd March and 24th March, 2024 were Saturday and Sunday, respectively and 25th March, 2024 was a holiday on account of 'Holi' festival and, accordingly, petitioner again requested 3rd respondent, through online mode on 25th March, 2024, for providing the petitioner sufficient time for filing reply. However, to the dismay of the petitioner, again on 25th March, 2024 at 8.25 P.M., the 3rd respondent granted less than 24 hours' time for filing reply and stated that reply should be filed by the petitioner latest by 4.30 P.M. on 26th March, 2024, as a last opportunity.

10. Petitioner, on 25th March, 2024 itself, requested for grant of reasonable time for filing reply, but, thereafter, 3rd Respondent proceeded to pass the impugned order under Clause (d) of Section 148A of the Act and concluded that petitioner's case is fit for issuance of notice for initiation of re-assessment proceeding under Section 148 of the Act and it was recorded in the order that even sanction has been granted by the competent authority against the petitioner. Consequently, further notice dated 29.03.2024 was issued under Section 148 of the Act initiating re-assessment proceeding against

petitioner and the petitioner was directed to file its reply within 90 days from the date of issuance of notice.

11. We have heard, Mr. Sumeet Gadodia, learned counsel for petitioner and Mr. Kumar Vaibhav, learned counsel for Respondent-Department. Having considered the rival submissions of learned counsels and on perusal of the record, we are of the opinion that order passed by 3rd Respondent initiating re-assessment proceeding against the petitioner is not only in utter violation of the principles of natural justice, but the same has been passed in undue haste which smacks of arbitrariness, as statutory provision of Section 148A has not been followed by 3rd Respondent.

12. It is well settled principles of law that anything done in undue haste can also be termed as 'arbitrary' and cannot be condoned in law. (Refer *Zenit Mataplast Private Limited Vs. State of Maharashtra and Ors.*, (2009) 10 SCC 388.

13. From the facts of the case, it is clearly evident that, initially, show cause notice was issued on 24.02.2024, wherein there was mention about enclosure of an Investigation Report, but said Investigation Report was not supplied to the petitioner and, as per the petitioner, said Investigation Report was supplied on 17.03.2024. Respondents, in their Counter Affidavit, admit that, probably, on account of technical error, enclosures were not contained as attachment to the notice dated 24.02.2024, but it has been stated that subsequently Investigation Report was duly sent to the petitioner through ITBA

system vide letter dated 12.03.2024 and through Departmental e-mail dated 13th March, 2024 at 1.06 P.M. Thus, even if it is accepted that Investigation Report was supplied to the petitioner on 12th March/13th March, 2024, there is no denial of the fact by respondents in the Counter Affidavit that the amount mentioned in initial show cause notice pertaining to term deposit of Rs. 26,51,899/- was amended vide Notice dated 20th March, 2024 and, for the first time, petitioner was put to notice that it has made term deposit of Rs. 3,91,08,021/- and was directed to explain the source of said fund. Respondents, in their Counter Affidavit, have clearly stated that due to inadvertent typographical mistakes, which was later on corrected by issuance of subsequent letter dated 20.03.2024, petitioner was put to notice regarding Term Deposit totaling to Rs. 3,91,08,021/-. However, they have tried to defend their said action by stating, inter alia, that said information is already available in 26AS and was also within the knowledge of the petitioner and, thus, it cannot be said that a new allegation has been levelled against the petitioner.

14. In our opinion, subsequent notice dated 20th March, 2024 clearly contained additional allegations, wherein as against time deposit amount of Rs. 26,51,899/-, petitioner was directed to explain the source of fund of time deposit of Rs. 3,91,08,021/-. Thus, certainly, new facts were introduced in the show cause notice and the petitioner was put to notice for the first time in respect of aforesaid fact on 20th March, 2024.

Thereafter, initially, petitioner was only granted two days' time i.e. up to 22nd March, 2024 to submit its reply and on request of the petitioner, petitioner was further granted three days' time i.e. till 25th March, 2024 to submit its reply. It is not in dispute that 23rd March and 24th March, 2024 were Saturday and Sunday respectively and 25th March, 2024 was a holiday on account of 'Holi' festival and, thus, effectively, petitioner was not granted even a single working day to furnish its reply and, on request made by the petitioner, again on 25th March, 2024 at 8.55 P.M., 3rd respondent directed the petitioner to submit its reply by the next day i.e. 26th March, 2024 by 4.30 P.M. as a last opportunity.

Aforesaid facts clearly reveal that the 3rd respondent acted in most hasty manner in conducting the entire proceedings, and, proceedings have been conducted in utter violation of the principles of natural justice and even contrary to the provisions of Section 148A of the Act, inasmuch as, Section148A(b) of the Act clearly provides, inter alia, for providing an opportunity of being heard by serving a show cause notice upon the assessee providing such time to the assessee being not less than seven days. In the present case since new facts were introduced in the notice on 20th March, 2024, at least seven days' time should have been granted to Petitioner for replying to the same, but in a hurried manner, entire proceedings were conducted and impugned order dated 29.03.2024 was passed by 3rd respondent in utter violation

of the principles of natural justice and contrary to statutory provisions contained under Section 148A of the Act.

15. Under the aforesaid circumstances, impugned order dated 29.03.2024 (Annexure 14 of the writ petition) and Notice initiating re-assessment proceeding under Section 148 dated 29.03.2024 (Annexure-15), both issued by the 3rd Respondent, are hereby, quashed and set aside.

16. However, the 3rd respondent is permitted to initiate fresh proceedings; however, it must be strictly in terms of the provisions of Section 148 of the Act. In the facts and circumstances of the case, we are convinced that the petitioner has been subjected to unnecessary harassment and, accordingly, we allow the writ petition imposing a cost of Rs. 50,000/- (Fifty Thousand) to be paid by the 3rd respondent to the petitioner.

17. Consequently, the instant writ application stands allowed. Pending I.A., if any, also stands disposed of.

(M.S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

Jharkhand High Court at Ranchi
Dated:- 17 /12/2024
Amardeep/ AFR