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wp 169.24

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 169 OF 2024

Popatlal Umedmalji Jain

Age:- 68 years, Occ.:- Agri and Business,

R/o. B/4, Sarasvati Colony (West),

Aurangpura, Aurangabad.

... PETITIONER

V/s.

1. The Income Tax Officer,
Ward 1 (5), 2nd Floor,
Jeevan Suman LIC Building,
N-5, Cidco, Aurangabad.

2. The Principal Commissioner Income Tax
Income Tax Department, Nasik-1.
Having office at Kendria Rajaswa Bhawan,
Gadkari Chowk, Old Agra road, Nashik.

... RESPONDENTS

...

Mr. A. R. Vaidya, *Advocate for the Petitioner*
Mr. Alok Sharma, *Advocate for the Respondents*

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CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

RESERVED ON : 9th January, 2024

PRONOUNCED ON : 5th February, 2024

JUDGMENT (Per: Y. G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. We have heard the learned advocates appearing on behalf of both the sides.

3. The Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India thereby praying for issuance of Writ of Mandamus to quash and set aside show cause notice dated 28th March, 2023, issued under Section 148-A of the Income Tax Act, 1961 as well as the Order dated 10th April, 2023 passed therein.

4. The learned counsel for the petitioner submits that the Petitioner is an assessee under the Income Tax Act, 1961 (for sake of brevity hereinafter referred as 'Act') and regularly submitting Income Tax Return each and every year. The Petitioner's wife is running the Proprietary concern firm in the name of "*Mansukh Sarees*". The Petitioner is working in the said firm on salary basis. The Petitioner is also earning income from some properties. The Petitioner furnished returns for the year 2019-2020 and disclosed all sources of income. On 27th and 28th April, 2019, the Petitioner performed marriage of his daughter namely Bhagyashree in a Corintriains Resort and Club (Niyati Hotels and Resorts Pvt Ltd.) and entire expenditure occurred for said marriage is well accounted in his income record. However, on 28.03.2023, the Petitioner was served with the impugned notice u/s 148-A of the Act alleging therein about incurring huge expenses on marriage of his daughter, which escaped in the

assessment within the meaning of Sec. 147 of the Act and called to submit explanation. Accordingly, the Petitioner replied to the said notice pointing out all the details of his source of income with proof. Further, the Petitioner prayed for personal hearing to explain the accounts, however, the Respondent No.1 passed the impugned order dated 10th April, 2023, without providing an opportunity of personal hearing. Therefore, impugned notice dated 28th March, 2023 issued under Sec. 148-A of the Income Tax Act, 1961 and order dated 10th April, 2023 passed therein are illegal and bad in law.

5. The learned counsel for the Petitioner relies upon the following judgments / orders:-

(i) Judgment and Order passed by the Division Bench of Punjab and Haryana High Court in C.W. P No.10219 of 2022 dated 02.06.2022 (Anshul Jain V/s. Principal Commissioner of Income Tax and Anr.).

(ii) Order passed by the Division Bench of Gujarat High Court in R/Special Civil Application No. 19275 of 2021 dated 06.07.2023.

(iii) Order passed by the Division Bench of Gujarat High Court in R/Special Civil Application No.17321 of 2022 and other bunch of applications dated 07.02.2023.

(iv) Judgment dated 29.03.2022 in Writ Petition No. 1334 of 2021 passed by the Division Bench of this Court (Coram: K. R. Shriram and N. J. Jamdar JJ.)

6. On the other hand, Mr. Sharma, the learned counsel for the Respondents submits that the notices dated 28.03.2023 issued u/s 148-A (b) and the order dated 10.04.2023 u/s 148-A (d) of the Income Tax Act for the year 2019-2020, are legal and proper. The revenue authority received some confidential information in respect of tax evasion by the Petitioner under the category of “High Risk Transaction CRIU/ VRU”, during search and seizure undertaken u/s 132 of the Act, 1961 on Niyati Group and related entries on 14.12.2022, by the DDIT (InV)-1, FAIU, Pune. During post search investigation from the available information, it was revealed that the Petitioner booked the Corintriains Resort and Club (Niyati Hotels and Resort Pvt., Ltd.,) on 27th & 28th April, 2018 for wedding event of his daughter Bhagyashree & his son in law Akshay Jain in his name i.e. Mr. Popatlal Jain and made total payment to said Resort to the tune of Rs. 21,76,000/- from which Rs. 11,88,125 was made by cheque and Rs. 9,87,875/- was given in cash (including cash of Rs. 4,87,875/-) in financial year 2018-2019. Therefore, the petitioner was served with notice dated 28-03-2023 u/s 148-A(b) of the Act and he was directed to submit his reply on or before 04.04.2023. Accordingly, the Petitioner submitted reply that he disclosed about his source of income and regularly assessed tax and filed ITR within prescribed period. According to the Respondent, the Petitioner disclosed his salary received from M/s Mansukh

Saree, Rental Income from property and Interest from FDR and Advances and during said year he arranged marriage of his daughter at Corinthians Resort on 28.04.2018. He incurred marriage expenses out of his savings, maturity value of FDR, LIC and compensation received on compulsory acquisition of Agricultural land. The payment made to the Resort were by withdrawal from the Savings Bank Account and from Income of business. Notice was issued to the Petitioner and further he was asked to submit his explanation. After going through the reply of Petitioner, the Respondent was not satisfied. Hence, a reasoned order was passed on 10.04.2023 u/s 148 A(d) of the Act, after following the due procedure. Hence, prayed for dismissal of the petition.

7. The issue involved in the present petition is no more *res integra*. In similar set of facts and circumstances, this Court delivered a Judgment on 08th January, 2024 in **Writ Petition No. 10075 of 2023 in case of Satguru Sai Extrusions Pvt.Ltd., V/s. Union of India**, holding that as per the language of sub-clause (a), the Assessing Officer, before issuing any notice u/s 148-A, shall conduct an enquiry, if required, with the prior approval of the specified authority. The acts to be performed by the Assessing Officer would include conducting of any enquiry, if required. Under clause (b), an opportunity of being heard is to be provided to the assessee. Clause (c) requires that the reply of the assessee has to be taken into account and clause (d) requires an order to

be passed for forming an opinion that notice u/s 148 has to be issued on the basis of the material available on record, which includes the reply of the assessee. It is further held that, the words "*if required*" have been set out in 148A(a) so as to leave it to the discretion of the Assessing Officer as to whether he desires to conduct an enquiry. If the Legislature had the intent and object of mandating an enquiry before issuing a show cause notice under clause (b), the Legislature would not have specifically used the words "*if required*", following the words "*conduct an enquiry*". In these circumstances, if a harmonious interpretation is to be arrived at without rendering the words "*if required*" meaningless, in our view, the word '*shall*' would mean '*may*' as Section 148A(a) grants discretion to the Assessing Officer to conduct an enquiry [Sadguru Sai Extrusions (supra)].

8. In the case in hand it appears that the Petitioner has filed his returns for the assessment year 2019-2020 which was duly assessed on 23.08.2019. It is not in dispute that on 27th and 28th April, 2019, the marriage of the Petitioner's daughter was solemnized in Corinttrians Resort and Club (Niyati Hotels and Resorts Pvt Ltd.). The Petitioner incurred entire expenditure of the said marriage. According to the Petitioner, he disclosed his entire income for the year 2018-2019 and all source of income to tax and filed ITR within prescribed period. However, the Respondent-Revenue Authority contended that

as per investigation, the Petitioner found evading the Income Tax under “High Risk Transaction CRIU/ VRU” category during search and seizure undertaken u/s 132 of the Act, 1961 at Niyati Group related to entries dated 14.12.2022 and during post search investigation, it was revealed that the Petitioner had booked Corinttrians Resort and Club (Niyati Hotels and Resort Pvt., Ltd.,) for 27th & 28th April, 2018 for wedding event of his daughter Bhagyashree & son in law Akshay Jain in the name of Petitioner and made payment to the tune of Rs. 21,76,000/- from which Rs. 11,88,125 was made by cheque and Rs. 9,87,875/- was given in cash (including cash of Rs. 4,87,875/- in financial year 2018-2019).

9. Therefore, on 28.03.2023, the Petitioner was served with the notice under Section 148-A of the Act (Annexure P-1) claiming escapement of income chargeable to tax for the assessment year 2019-2020. Along with the notice the Petitioner was also supplied with information forming basis of notice under Section 148A(b). The Petitioner responded to said notice vide communication dated 1st April, 2023 and gave details of his income. So also, produced Statement of Bank Account. On 10th April, 2023, the Respondent No.1 passed the impugned order holding that, prima facie, income chargeable escaped within the meaning of Sec. 147 of the Act and proposed to re-asses such income and called upon the Petitioner to furnish details/allowances or

deduction for the Assessment Year 2019-2020 within 30 days from the service of notice, by order under sub-section (d) of the Sec. 148A of the Act.

10. Therefore, considering the facts and circumstances of case in hand as well as ratio laid down in various case law cited herein-above, We, however, hold that since Section 148 permits an assessee to raise all issues at the time of the hearing, in view of the pronouncement of the Hon'ble Supreme Court in the case of **Anshul Jain** (*supra*). The Respondents shall follow the due procedure laid down in law and ensure that the Petitioner is extended an adequate and reasonable opportunity to contest the notice u/s 148, as is permissible in Law. Accordingly, all contentions of the parties are kept open.

11. In view of above discussion, **this petition is disposed off.** Accordingly, Rule is discharged.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]