IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12093 OF 2024

Pramod Nathu Satav ...Petitioner
Vs
Income Tax Officer Ward 12(4) & Ors. ...Respondents

Ms. Deepa Khare i/b. Mint & Confreres for Petitioner.
Mr. Akhileshwar Sharma for Respondents.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATED: 24 September 2024.

P.C.

1. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:-

> "(a) Declare that the impugned Order u/s. 144 rws 147 dated 16.12.2019 along with demand notice u/s. 156 dt 16.12.2019 arising from the Order u/s. 147 and the penalty u/s. 271(1)(c) for AY 2012-13 is wholly without jurisdiction, illegal, arbitrary and liable to be quashed; (Exhibit P, Q and T)
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> (b) Issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Articles 226 of the Constitution of India, quashing the impugned Order u/s. 144 rws 147 along with demand notice u/s. 156 dt 16.12.2019 arising from the Order u/s. 147 and the penalty u/s. 271(1)(c) for AY 2012-13 as being wholly without jurisdiction, illegal and arbitrary; (Exhibit P, Q and T)
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> (c) Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondents to refrain from taking any action from reassessment for AY 2012-13 along with demand notice u/s. 156 dt. 16.12.2019 arising from the Order u/s. 147 and the penalty u/s.

271(1)(c) for AY 2012-13;

(d) Pending the hearing and disposal of this Petition, to stay the operation and implementation of the impugned Order dated 16.12.2019, along with demand arising from the Order u/s. 147 and the penalty u/s. 271(1)(c) for AY 2012-13 and to stay the impugned reassessment proceedings for AY 2012-13 along with demand notice u/s. 156 dt. 16.12.2019 arising from the Order u/s. 147 and the penalty u/s. 271(1)(c) for AY 2012-13; (Exhibit P, Q and T)"

2. The assessment year in question is 2012-13. It is the case of the petitioner that on 14 July 2023, the petitioner 'logged in' to the Income Tax Portal and noticed a letter dated 14 July 2023 for recovery of demand of Rs. 25,66,460/- for Assessment Year 2011-12 arising from the Assessment Order passed under Section 147 of the Income Tax Act (for short, the "IT Act"). It was noticed that thereafter on 25 July 2023, another communication/notice dated 18 July 2023 for Assessment Year 2012-13 was issued to the petitioner raising a demand of Rs.28,71,580/- arising out of an Assessment Order passed under Section 147 of the Act. Thereafter on 25 July 2023, a demand of Rs.9,92,171/- being penalty amount under Section 271(1)(c) of the Act for AY 2012-13 has been issued to the petitioner.

3. On such backdrop, the petitioner, through his Tax Consultant, addressed an e-mail to the Jurisdictional Assessing Officer on 14 August 2023 requesting him that since the assessment order itself was not reflected on the Income Tax portal, the petitioner did not have a copy of the same. On 09 September 2023, the petitioner, through his Tax Consultant, again requested through email for providing a copy of the Assessment Order for Assessment Years 2011-12 and 2012-13. It was again pointed out that the order was not posted on the Income Tax Portal. On 12 September 2023, in response to the petitioner's request demanding the assessment order, respondent no.1 provided a copy of the Assessment Order by e-mail. It was noticed that the Assessment Order did not have any computation of income. Also, the Assessment Order did not reflect the DIN which was required to be provided as per the CBDT Circular No. 19/2019 dated 14 August 2019 (for short, "**said circular**"). The petitioner, therefore, through his Tax Consultant, addressed another e-mail dated 18 January 2024 to the Assessing Officer pointing out all the discrepancies, as also that the petitioner had not received any notice under Section 156 of the Act in respect of the Assessment Order. It was requested that the petitioner be provided with the DIN and Notice of Demand for the order in question. In pursuance thereof, on 22 January 2024, respondent no. 1 provided an intimation letter dated 16 December 2019 from which it was gathered by the petitioner that the assessment proceedings were reopened by issuance of a notice under Section 148 of the Act dated 27 March 2019 on the basis of AIR information. It also appears that the petitioner has filed income tax returns with effect from assessment year 2014-15 and prior thereto, as stated by learned counsel for the petitioner, no returns were filed. It also appears from the income tax returns, which were subsequently filed, that the e-mail ID was provided by the petitioner.

4. It is the petitioner's case that thereafter on 08 May 2019, 09 July 2019 and 22 November 2019, the petitioner was issued notices under Section 142(1) of the IT Act, which are stated to be notices posted on the portal. The income of the petitioner as assessed as per the impugned Assessment Order was Rs.38,00,570/- by making an addition of Rs 1,10,000/- towards cash deposits in the savings bank account with ICICI Bank vide Account no. 000501572535 as unexplained money and Rs.23,06,077/- towards purchase of Motor Vehicle from M/s. DSK Motors as unexplained investment under Section 69 of the Act. It is on such backdrop, the penalty proceedings under Section 271(1)(c) of the Act have been initiated against the petitioner and a show cause notice dated 17 December 2019 was issued for concealment of income.

5. The petitioner, in the above circumstances, is before the Court praying for the reliefs which are noted by us hereinabove. Reply affidavit is filed on behalf of the respondents contesting the present proceedings. The primary contention in the reply affidavit is that the petition be not entertained on the ground that a notice under Section 148 of the Act to reopen the assessment proceedings was issued to the petitioner by the Assessing Officer which was sent by speed post and acknowledgment to that effect was received. However, in so far as the impugned assessment order dated 16 December 2019 not providing DIN is concerned, the reply affidavit is completely silent. There is no valid justification to the respondents' case as set out in paragraph 18 of the reply affidavit. In fact, the contention as urged in paragraph 18 of the reply affidavit appears to be in the teeth of the said circular. Paragraph 18 reads thus:-

> "18. Ground D, E & F of para 8 With reference to the contents of Ground D, E & F of para 8 of the Writ Petition, it is contended that the order u/s. 144 rws 147 of the Act, and demand notice does not bear DIN. It is hereby stated that the contention of the assessee is not acceptable as the said order has been passed through the AST module for issuing orders in reopened cases in the ITBA Module at that time. A common DIN No. 20121122730 was generated in the ITBA module for the assessment order issued under section 147 of the Act and its annexures. This DIN is the common DIN for the relevant order and all its annexures. Furthermore, the assessment order along with computation sheet, demand notice and penalty notice were dispatched through Speed Post Tracking No. EM319372965IN. This demonstrates that the order under section 144 read with section 147, along with all annexures, was issued with the appropriate DIN. Therefore, there is no violation of the Circular, and the order is legally valid."

6. Having heard learned counsel for the parties and having perused the record, we are of the clear opinion that although it appears that the petitioner was not a diligent taxpayer, inasmuch as, although the petitioner was liable under the law to file returns, he failed to file income tax returns for the assessment year in question, and for such reason, rightly an action was initiated against the petitioner. However, the difficulty is that there are deficiencies/lacunas in the proceedings as initiated by the Assessing Officer, and that too without following the procedure which has been time to time prescribed by the CBDT under its circulars. The procedure would also be required to be faulted in as much as, a notice as per law under Section 148A(b) of the Act was not issued to the petitioner which deprived an opportunity to the petitioner to respond to the reassessment in the manner known to law. Such notice under Section 148A(b) of the Act was required to be issued by permissible modes and more particularly keeping in view the directions as issued by the CBDT in its circulars. It appears that no intimation by an e-mail was issued to the petitioner as the Assessing Officer had proceeded to rely only on the intimation issued by speed post, which also appears to be disputed as the acknowledgment does not bear the signature of the assessee. We however do not intend to delve on such disputed issues, suffice it to observe that it would be necessary, in the facts and circumstances of the case, for the department to follow a proper procedure in accordance with law so as to initiate an action under Section 148 of the Act for any reassessment to be undertaken under Section 147 of the Act.

7. In the light of the above discussion, we are inclined to allow the petition in terms of prayer clause (a). However, it is clarified that it shall be open to the respondents to initiate further action for the assessment year in question by following the lawful procedure and after the petitioner is heard as per law for appropriate orders to be passed. All contentions in that regard are expressly kept open.

8. Disposed of in the above terms. No costs.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI, J.)