IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18951 of 2024 (O&M)

Reserved on : 03.09.2024
Date of Pronouncement: 19.09.2024

Vishal Garg ...Petitioner

Versus

Assistant Commissioner of Income Tax and others ...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mrs. Radhika Suri, Senior Advocate assisted by Mr. Abhinav Narang, Advocate, for the petitioner.

Ms. Urvashi Dhugga, Senior Standing Counsel for respondent nos. 1 and 5.

Ms. Gauri Neo Rampal Opal, Senior Standing Counsel for respondent nos. 2 and 3 (through video conferencing).

***

SANJAY VASHISTH, J.

By way of this writ petition, the petitioner prays for quashing of the notices issued to him under Section 133 (6) of the Income Tax Act, 1961 (for short, 'the Act') and subsequent notice under Section 148 of the Act dated 31.03.2024 for AY 2020-21.

2. The petitioner is engaged in the business of sale of medicines through firm M/s Ecomed Mullana and M/s M. M. Healthcare, Solan and also earning commission from marketing activities and supply of electricity through proprietorship firm Imperial Consultancy Services.

3. A notice under Section 133(6) of the Act was served upon him by respondent no. 3 on 16.12.2022, 26.12.2022 and 06.01.2023 whereby he was asked to furnish information as per the documents attached to the notice

Annexure-1 and query no. 6 informing about the details of contractual receipts and fees for professional and technical services.

4. In response, the petitioner filed reply including query no.6 disclosing that during A.Y. 2021-22, he had received sales commission from UFO Moviez India Limited of ₹ 14,58,004/- which was duly offered for tax as part of business turnover disclosed in the ITR originally filed by the petitioner on 04.01.2021. The same has been duly processed and refund of ₹ 1,14,920/- was also shown after processing under Section 143(1) of the Act on 28.09.2021.

5. The petitioner was served with a notice under Section 148 of the Act on 31.03.2024 with the assumption that he has received a commission of ₹ 14,58,004/-. The notice mentioned that the petitioner assessee had not filed reply during proceedings under Section 133(6) of the Act, and therefore, it was stated as undisclosed income.

6. It is the submission of the petitioner that the reply which had been filed by the petitioner answering to the specific aspect i.e. commission was on record and the same has been erroneously assumed to have not been filed and there has been complete non-application of mind. It is further submitted that the amount was already shown in his return, and therefore, there was no occasion for the respondents issuing notice under Section 148 of the Act as there was no income escaped or remained un-informed while processing the income tax return for A.Y. 2020-21.

7. Learned counsel for the petitioner has relied on Supreme Court judgment in ***ITO vs Lakhmani Mewal Dass*** 103 ITR 437, to submit that reasons for determination of belief must have a rational connection or

relevant bearing. Rational connection postulates that there has been a direct nexus or live link between the material coming to the notice of ITO and the formation of the belief that there had been escapement of income of the assessee.

8. Learned counsel for the petitioner has submitted that as the return reflected the inclusion of the amount in its ITR, and reply had also been filed, reflecting that the same had been offered for tax as part of business turnover and the amount of tax had also been deposited accordingly, refund of which had been calculated, there was no occasion for issuing of notice under Section 148 of the Act.

9. We had issued notices to the counsel for the Revenue and upon instructions and examining the facts, it has been borne out that reply was already filed.

In fact, we find that the Assessing Officer while issuing notice under Section 133(6) of the Act had asked the assessee to furnish information with regard to query no.6, which is as under:-

> *"6. Give details of party-wise break-up for the contract receipts and payment received in respect of Fees for professional or technical service."*

10. In response to the said notice, petitioner- assessee had filed reply dated 16.01.2023, wherein specific response has been given in regard to query no.6, which is as under:-

> *"6. With reference to party wise details of contractual receipts and fees for professional and technical services, it is submitted that assessee was only into business of Supply of electricity as well as Sale of medicines through his various proprietorship concerns and has not earned any contractual or fees for*

professional or technical services. However, he had received sales commission from UFO Moviez India Ltd. (PAN AABCV8900E) of Rs.14,58,004/- and the same was offered for tax as part of business turnover disclosed in the ITR."

11. Learned Senior counsel for the petitioner assessee further submits that despite providing exhaustive reply to each and every query, including query No.6, petitioner assessee has been served with the impugned notice dated 31.03.2024 (P-7), under Section 148 of the Act.

Learned Senior counsel, thus, submits that notice under Section 148 of the Act, has been issued erroneously, assuming that the petitioner assessee has received the commission of Rs.14,58,004/-, and failed to include it in the taxable business turnover, nor filed a reply to the query.

12. Attention is drawn to the return filed by the petitioner assessee for the Assessment Year 2020-21, under ITR acknowledgment No.998247251040121, wherein, the amount in question, Rs.14,58,004 has been disclosed as the gross receipt from the business/profession.

Therefore, learned Senior counsel for the petitioner - assessee submits that upon the issuance of notice under Section 133(6) of the Act, submission of a reply was sufficient for the revenue to satisfy itself by reviewing the relevant entry made in the ITR-3, along with the reference given in the reply to the notice. Therefore, issuance of the notice under Section 148 of the Act under the impression of escaping the assessment for the Assessment Year 2020-21, is perverse and without application of mind.

13. Learned Senior counsel for the petitioner assessee also submits that even as per the so-called verification done by the revenue under E-Verification Scheme, 2021, particularly, regarding ITR for A.Y. 2020- 21,

related to the petitioner assessee, is factually incorrect. Despite, the submission of a reply to the notice, at point No.4, respondents state that:-

> *"4. The assessee has received commission of Rs. 14,58,004/- during the period under consideration and the TDS on the same has also been claimed by the assessee in the ITR. On this account, the assessee has not filed any reply, hence, further action is required on the issue of commission of Rs. 14,58,004/-."*

While the learned senior counsel states that the reasons assigned in the verification report may not be happily worded, it cannot be said that the same are incorrect.

14. Although the respondents have not been able to controvert the fact of the reply having been filed to notice under Section 133(6) of the Act and of the petitioner having reflected the alleged escaped income in his income tax return, still the respondents insist of having rightly issued the notice.

15. Almost in similar facts, the High Court of judicature of Bombay in Writ Petition No. 8594 of 2024 – ***Benaifer Vispi Patel vs The Income Tax Officer Ward 1 and another*** decided on 15.07.2024 found that while the Central Government is empowered under Section 135A of the Act to make a scheme of income tax in the official gazette for the purpose of collecting information under Section 133B of the Act or for demanding the information under Section 133C of the Act, or by exercising power of inspection under Section 134 of the Act or under Section 135 of the Act, however, the same has to be exercised with due caution and care.

16. While the petitioner was served with a notice under Section 133(6) of the Act in the present case and reply was filed, the reply was

ignored stating that the same has not been filed. In circumstances where the information may not have been received in the electronic mechanism system which is also prone to errors, once it has come on record that reply had actually been filed, it would be wholly unjustified to allow the Revenue to make the assessee face the cumbersome proceedings under Section 148 of the Act.

17. Having proceeded on a presumption that reply not having been filed and the amount having escaped from income tax assessed, we are satisfied that the said amount was already recorded and included in the ITR for the AY 2020-21 and the same was duly processed by the Assessing Officer and it was offered for tax as part of business turnover. We are satisfied that the impugned notice under Section 148 of the Act in the present case has been issued without application of mind and stands vitiated on that count. The proceedings initiated, therefore, are not sustainable in law.

18. We also find that the notice dated 31.03.2024 has been issued by the ACIT Central Karnal and the notices issued under Section 133 (6) and Section 148 of the Act were issued by the jurisdictional Assessing Officer. He, therefore, was also not competent to issue the same in view of the judgment passed in CWP No.21509 of 2023 - ***Jasjit Singh vs. Union of India and others***, decided on 29.07.2024, wherein it has been held as under:

> *"16. We are in agreement with the view taken by the Coordinate Bench and hold that such circular or instructions by the Board could not have been issued to override statutory provisions or to make them otiose or obsolete. Legislative enactments having financial implications are required to be*

followed strictly and mandatorily. By exercising the powers contained in Sections 119 and 120 of the Act, 1961 as well as Section 144B (7 & 8), the authorities cannot be allowed to usurp the legal provisions to their own satisfaction and convenience causing hardship to the assessees. It also leaves confusion in the minds of the taxpayers. In the opinion of this Court, instructions and circulars can be issued only for the purpose of supplementing the statutory provisions and for their implementation.

17. In view of the aforesaid discussion, there is no occasion to distinguish or take a different view as suggested by the learned counsel for the revenue from what has already been held by the Coordinate Bench.

18. Keeping in view the law laid down by the Coordinate Bench (supra), notices issued by the JAO under Section 148 of the Act, 1961 and the proceedings initiated thereafter without conducting the faceless assessment as envisaged under Section 144B of the Act, 1961, have been found to be contrary to the provisions of the Act, 1961 and accordingly notices dated 28.02.2023, 16.03.2023, 20.03.2024 and 30.03.2023 and order dated 30.03.2023, are set aside for want of jurisdiction.

19. The respondents-revenue would be, however, at liberty to follow the procedure as laid down under the Act, 1961 and proceed accordingly, if so advised.

20. All the writ petitions are allowed. The interim order passed by the Court shall stand merged with the present order."

Therefore, on both the counts, we find the notices are not sustainable in law. We, accordingly, quash the impugned notices dated 16.12.2022, 26.12.2022 and 06.01.2023 issued under Section 133 (6) of the Act, consequential notice dated 31.03.2024 issued under Section 148 of the Act and any further proceedings which the respondents may have undertaken on the basis of the same.

19. The writ petition is allowed.

20. All pending applications shall stand disposed of.

21. No costs.

(SANJAY VASHISHT)
JUDGE

(SANJEEV PRAKASH SHARMA)
JUDGE

19.09.2024
vs

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No