



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 12 March 2024**  
**Judgment pronounced on: 01 April 2024**

+ **W.P.(C) 7808/2023**

**MAHABIR SINGH JOON**

..... Petitioner

Through: **Mr. Vineet Garg, Adv.**

versus

**THE INCOME TAX OFFICER & ANR.** ....Respondents

Through: **Mr. Puneet Rai, SSC with Mr. Ashvini Kumar and Mr. Rishabh Nangia, Advs.**

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

## **J U D G M E N T**

### **PURUSHAINDRA KUMAR KAURAV, J.**

1. The petitioner in the instant writ petition is essentially aggrieved by an order dated 27 March 2023 passed by the Revenue under Section 148A(d) of the Income Tax Act, 1961 ["Act"]. He also challenges consequential initiation of assessment proceedings relevant to Assessment Year ["AY"] 2016-17.



2. The challenge is laid on the foundation that the show cause notice issued under Section 148A(b) of the Act was not served upon the petitioner. According to the petitioner, in the absence of any service of the show cause notice, no reply could be filed and therefore, the impugned order under Section 148(A)(d) of the Act is liable to be set aside, as it stood against the principles of natural justice.

3. The facts, as borne out from the petition, indicate that the petitioner is an individual who claims to be an agriculturist and had not filed any income tax return for the AY 2016-17 on the pretext that income earned from agriculture is not chargeable to tax.

4. On 15 March 2023, notice under Section 148A(b) of the Act is stated to have been issued to the petitioner asserting therein that, on a perusal of the information as reported on Insight Portal of the Revenue, during financial year 2015-16 (relevant AY 2016-17), the petitioner had entered into a transaction of cash deposit amounting to INR 53,55,000/- in his savings account. It is argued by the petitioner that the aforesaid notice was never served upon him.

5. Since there was no reply to the said show cause notice, an order under Section 148A(d) of the Act came to be passed on 27 March 2023. Simultaneously, notice under Section 148A of the Act was also issued on the even date. The following recitals have been made in the order dated 27 March 2023:-

**"Order under clause (d) of section 148A of the Income-tax Act, 1961**



## 1. Background

The assessee is an individual. The assessee has not filed ITR for AY 2016-17.

## 2. Information received

2.1 In this case information has been received through Insight Portal of the Income Tax Department under NMS/RMS category that during the AY 2016-17 the assessee has entered into following financial transactions:

| S.No. | Information Type               | Source/Bank               | Amount(Rs)         |
|-------|--------------------------------|---------------------------|--------------------|
| 1.    | Cash Deposit in Saving Account | Sarva Haryana Gramin Bank | 53,55,000/-        |
|       | <b>Total</b>                   |                           | <b>53,55,000/-</b> |

3. Sarva Haryana Gramin Bank, Rohtak which in response to it submitted online reply by attaching bank statement of the assessee. Further, show cause notice u/s 148A(b) of the Income Tax Act, 1961, dated - **15.03.2023** was issued to the assessee electronically through ITBA Portal providing him/her the information/material mentioned in para 2.1 above. **The notice has been delivered at the mail mentioned in the PAN database and also notice has been sent through Speed Post with tracking 10 No. ED899170251IN. The compliance date of the notice u/s 148A(b) was 22.03.2023.**

4. In response to the above notice assessee **did not filed any response or reply.**

## 5. Findings/Comments of AO

It is observed from the bank statement of the assessee has deposited cash amounting to Rs. 53,55,000/- which is un-explained money. Hence, it requires to be verified and examined.

6. Further, the requirements to initiate proceedings u/s 147 of the Income Tax Act, 1961 as provided by sections 148A r.w.s. 148 of the Act have been duly followed and due prior approval of the



specified authority as provided u/s 151 of the Act has been taken during various steps of the procedure entailed in section 148A of the Act.

7. In view of the above, provisions of Section 147/148 of the Income tax Act, 1961 are applicable to the facts of this case for the assessment year under consideration as per analysis and material available on record has led to formation of **belief that there is an escapement of income to the tune of Rs. 53,55,000/- from taxation.** Hence, it is a fit case for issuance of notice u/s 148 of the Income Tax Act, 1961.

8. This Order is being passed with the prior approval of the **Principal Chief Commissioner of Income-tax, Delhi."**

[Emphasis added]

6. It be noted that when this matter was initially taken up for hearing on 31 May 2023, this Court passed the following order:-

" CM No.30137/2023

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.

**W.P.(C) 7808/2023 & CM No.30138/2023** [Application filed on behalf of the petitioner seeking interim relief]

2. This writ petition concerns Assessment Year (AY) 2016-17.

3. The petitioner seeks to assail the order dated 27.03.2023 passed under Section 148A(d) of the Income Tax Act, 1961 [in short, "the Act"].

4. In addition, relief is also sought to quash the consequential initiation of reassessment proceeding *qua* the AY in issue.

5. The principal ground taken by the petitioner to assail the aforementioned order is that the notice dated 15.03.2023 issued under Section 148A(b) of the Act was never served on the petitioner.

6. In support of this plea, counsel for the petitioner has drawn our attention to the screenshot of the designated portal.

7. Perusal of the screenshot would show that the email ID of the petitioner is not referred to therein. (See Annexure P-5, appended on page number 23).

Signature Not Verified

Digitally Signed by PRIYA  
Signing Date: 02.04.2024  
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8. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the respondents/revenue, has placed before us a hard copy of the tracking report of the Postal Department, which is suggestive of fact that delivery of the said notice was effected on the petitioner on 17.03.2023 at 14:21 hours.

9. Mr Rai will place the tracking record, as well as the relevant extract from the dispatch register, before this Court.

10. The postal receipt should also be placed on record.

11. The documents will be supported by an affidavit of the concerned officer.

12. Copy of the affidavit will be furnished to the counsel for the petitioner.

13. Counsel for the petitioner will have a liberty to file a rejoinder to the said affidavit.

14. List the matter on 22.07.2023.

15. In the meanwhile, reassessment proceeding will continue. However, if an order is passed, which is adverse to the interests of the petitioner, the same shall not be given effect to, till further directions of the Court.

16. Registry will scan and upload the hard copy of the tracking report, so that it remains embedded in the case file.”

[Emphasis added]

7. The Revenue filed an affidavit controverting the averments made in the writ petition which states *inter alia* that the notice under Section 148A(b) of the Act was duly served upon the petitioner *vide* speed post dated 15 March 2023 on the address, as was available with the Revenue. The tracking report of the said speed post indicates that the notice was duly delivered to the petitioner on 17 March 2023.

8. Additionally, it is stated that the proof of delivery was duly placed on the web portal of the speed post authorities, which was



downloaded by the Revenue on 17 March 2023 and annexed in the counter-affidavit as *Annexure-R2*. As per the Revenue's affidavit, despite service, no reply was received from the assessee and accordingly, impugned order came to be passed.

9. The Revenue in their counter affidavit has made the following unequivocal assertions with respect to service of notice under Section 148A(b) of the Act :-

**"5. That the answering Respondent hereby submits that the petitioner was duly served with the Notice dated 15.03.2023 vide speed post dated 15.03.2023 with Tracking No. 'ED89917025UN' to the address of the petitioner as per Database of the Income Tax Department. That on perusal of the tracking report, it is evident that the said notice was duly delivered to the addressee i.e the Petitioner at House No. 257, Sector-9, R.K. Puram, New Delhi-110022 on 17.03.2023. However, despite service, the petitioner chose not to file the reply in response to the aforesaid show cause notice dated 15.03.2023 issued u/s 148A(b) of the Act.**

That the Copy of the postal receipt dated 15.03.2023 by which Notice dated 15.03.2023 was issued u/s **148A(b)** was dispatched to the Petitioner is annexed and marked as Annexure R-1.

That the Copy of Proof of delivery on 17.03.2023 for the Notice u/s 148A(b) dated 15.03.2023 downloaded from the Web Portal of Speed Post Authorities is annexed and marked as Annexure R-2.

6. That the petitioner failed to submit the reply to notice dated 15 March 2023 issued under Section 148A(b) of the Act, duly served to the Petitioner on 17.03.2023. Thus, the answering Respondent passed the order u/s 148A(d) on 27.03.2024 which was also dispatched via speed post on 20.03.2023 bearing Tracking No. as ED899176890IN. The service of the order passed u/s 148A(d) of the Act has been admitted by the Petitioner in para 2.7 of the Petition that the same was received by the Petitioner via speed post along with Notice u/s 148 of the Act. It is pertinent to point out that the order u/s 148A(d) was also sent at the same address i.e House No. 257, Sector-9, R.K.Puram, New Delhi-110022 on which Notice u/s 148A(b) was dispatched and served to the Petitioner. The fact that the Petitioner



was issued the Show cause notice u/s 148A(b) of the Income Tax Act, 1961, dated - 15.03.2023 is duly mentioned in the order passed u/s 148A(d) of the Act. Further the Notice u/s 148A(b) and the order u/s 148A(d) were also uploaded electronically through ITBA Portal and served to the assessee on their E-filing Portal. The order dated 27.03.2023 passed u/s 148A(d) also states that the notice u/s 148A(b) for AY 2016- 17 has been sent through Speed Post with tracking No. ED899170251IN.

That the copy of the postal receipt dated 27.03.2023 by which order dated 27.03.2023 passed u/s 148A(d) of the Act was dispatched to the Petitioner is annexed and marked as Annexure R-3.

7. It is submitted that initially, the petitioner failed to respond to the statutory show cause notice u/s 148A(b) of the Act despite due service for the reasons best known to him and thereafter orchestrated an afterthought that the said show cause notice was not served to him with the malafide motive to derail and escape from the impugned reassessment proceedings in which it was prima facie established that the amount of income escaping assessment is more than the threshold limit of 50 lakhs in terms of Section 149 of the Act."

[Emphasis added]

10. We have considered the submissions made by the learned counsels for the parties and perused the record.

11. During the course of arguments, learned counsel for the petitioner reiterated the submissions made in the writ petition and submitted that the notice under Section 148A(b) of the Act ought to have been served on the petitioner's registered e-mail with the Income Tax Department, and since the Department has not been able to place on record the proof of service through e-mail, the impugned order stands vitiated and nullified.

12. We have given our thoughtful consideration to the grounds taken by the petitioner, however, we are not impressed with the same. The argument of the petitioner has to be rejected, primarily on the ground



that the mandate of Section 148A(b) of the Act is to provide, *inter alia*, an opportunity of being heard to the assessee by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than 7 days, but not exceeding 30 days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in that regard. The objective is to provide an opportunity to the assessee to show cause against the proposed action.

13. Understandably so, the aforesaid requirement is a legislative expression of the principles of natural justice, more specifically of the rule of *audi alteram partem*. However, the precise dynamics of the principles of natural justice, in a given factual situation, are to be determined in light of the facts and circumstances on record. It is apposite to point out that natural justice is not an unruly horse, and if the element of fairness is shown in the procedure followed by the authorities in the facts of the situation and effective compliance is demonstrated, then the Court cannot construe it as a breach of the fundamental principles of natural justice.

14. In the instant case, a careful perusal of the averments made by the petitioner manifests that the petitioner seems to have ingeniously given an impression about violation of the principles of natural justice. The averments, however, do not unequivocally allude to the fact that no notice at all has been served upon the petitioner under Section 148A(b) of the Act. Rather, what is sought to be contended is that the service of the notice through e-mail was not effected. In our considered view, the



same does not seem to be the mandate of Section 148A(b) of the Act. The Revenue has countered the version of the petitioner by placing on record the delivery report at the address of the petitioner. There is no quarrel regarding the address on record or the delivery report.

15. Additionally, we find that there is no rejoinder to the averments made in the affidavit by the Revenue. The same, therefore, remains uncontroverted. In such circumstances, it could be said that the statutory requirement was substantially fulfilled by the Revenue and to permit a challenge on a flimsy ground, as raised before us, would effectively amount to violence with the language of the statute. The requirement of natural justice stood fulfilled once the notice was served at the admitted address of the petitioner and the Revenue cannot be faulted in that case, irrespective of the consequences that flow therefrom.

16. We additionally find that the order of assessment came to be passed on 14 January 2024 and the petitioner has an efficacious alternative remedy to take appropriate recourse in accordance with law.

17. In view of the aforesaid, under the facts of the present case, we do not find any reason, much less a cogent reason, to entertain the instant writ petition or to annul the order passed under Section 148A(1)(d) of the Act. However, we leave it open to the petitioner to take appropriate recourse in accordance with law against the order of assessment passed during the pendency of the instant petition, if so advised.



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18. Consequently, the instant writ petition stands disposed of as dismissed, alongwith pending application(s), if any.

**PURUSHAINdra KUMAR KAURAV, J.**

**YASHWANT VERMA, J.**

**APRIL 1, 2024/MJ**

Signature Not Verified

Digitally Signed by PRIYA  
Signing Date: 02.04.2024  
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