OD-28

WPO/1132/2024
ORDER SHEET
THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Castle Suppliers Pvt. Ltd. & Anr.
Versus
Union of India & Ors.

BEFORE:
The Hon'ble JUSTICE RAJA BASU CHOWDHURY
Date: 12th June 2025

Appearance:
Mr. Satrajit Sen, Advocate
Mr. Hemant Tiwari, Adocate
for the petitioners

Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Advocate
Ms. Shradhya Ghosh, Advocate
for the respondents

1. Challenging inter alia the order passed under section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as "the said Act") for the assessment year 2017-18 the instant writ petition has been filed. It is the petitioners' case that the Assessing Officer had not appropriately considered the response filed by the petitioners.

2. Mr. Sen, learned advocate appearing in support of the writ petition by drawing attention of this Court to the notice issued under section 148A(b) of the said Act for the assessment year 2017-18 dated 23rd March 2024 would submit that the basis for issuing of such notice was an alleged credible information received in high risk transactions module that the assessee had undertaken the transaction amounting to Rs.24,88,29,320/- during the assessment year 2017-18. Along with the aforesaid notice, the information and materials relied on were also attached, which according to the

department, suggested that the income chargeable to tax had escaped the assessment as per the particulars provided therein. Mr. Sen has since highlighted in detail not only the extract of investigation report but also the response given by the petitioners and attempted to clarify that the three entities who were alleged to have transacted with the petitioners as had been identified in the extract of investigation report had in fact no transactions with the petitioners during the relevant period. The aforesaid would be apparent from the response wherein the petitioners had duly disclosed the audited accounts to substantiate that there had been no transaction with M/s. Solvent Vyapaar Private Limited. Insofar as M/s. Casio Vintrade Private Limited and M/s. Corum Securities Private Limited are concerned, there had been no transaction as well. According to the petitioners, the Assessing Officer did not appropriately consider the petitioners' response and had mechanically passed the order under Section 148A(d). Mr. Sen would submit that the approach of the Assessing Officer in mechanically disposing of the petitioners' response vitiates the order itself and in support of his aforesaid contention he has relied on the following judgments:

(i) ***Somnath Dealtrade Pvt. Ltd. v. Union of India & Others,*** reported in **2022 SCC Online Cal 4492** : **(2023) 455 ITR 720**

(ii) ***Mustafa Huseni Chunawala v. The Union of India & Ors.*** passed in **APOT/114/2022** and **IA No. GA/1/2022**

3. *Per contra*, Mr. Bhattacharjee, learned Advocate representing the department would submit that admittedly in this case, the petitioners were afforded with opportunity not only to respond but with an opportunity of

hearing as well. According to him, it is not the case of the petitioners that there has been non-compliance of the principles of natural justice. The assessing officer had duly considered the response filed by the petitioners and only thereafter had passed the order under Section 148A(d) of the said Act.

4. He would further submit that the order passed by the assessing officer is a well reasoned order. In such order, he has clarified that the assessee has not submitted bank statements of all the bank accounts from where various receipts in the hands of the company can be verified. According to him, the assessing officer has categorically noted the petitioners' response and has thereafter decided to reopen the assessment by passing an order under Section 148A(d) of the said Act and by issuing a consequential notice under Section 148 of the said Act. There is no irregularity in the order although, according to him, the proposition of law in the above judgments relied on by Mr. Sen is not in question, however, such judgments do not assist the petitioners' case. Further if this Court is to accept the challenge of this nature then the machinery provided for re-assessment would fail. The petitioners are not remediless. The issuance of notice under section 148 of the said Act only permits the assessing officer to reopen the assessment. The petitioners cannot be permitted to stall the proceedings. The scheme of the Act provides for enabling an assessee with further opportunity in the reassessment proceedings and it is only thereafter that the assessing officer is likely to take a decision and may either, in the facts, drop the proceedings or if he is of the opinion that a variation is necessary, due prior notice in this regard would be again served, having regard thereto, no interference is called for at this stage.

5. Heard the learned Advocates appearing for the respective parties and considered the materials on record. Prima facie, it appears that the notice under Section 148A(b) of the said Act dated 23rd March, 2024 has been issued in respect of the assessment year 2017-18. In the said notice amongst others, it has been highlighted that from the information and materials available, it would transpire that income chargeable to tax has escaped assessment. The petitioners have duly responded to the same and in the response have also extracted the investigation report relied on by the department. The relevant portion of the reply which extracts the investigation report and the relevant part of the response which deals with such report are extracted hereinbelow:-

"Reply Castle Suppliers, AY: 2017-18

Extract of Investigation Report dated NIL

2. Certain other details of the Company has also been provided in the information. These include its PAN and Bank Account Number. Financial Analysis of M/s Castle Suppliers Private Limited is as follows:

F.Y.	***Share Capital***	***Securities Premium Reserve***	***Borrowings***	***Total Equities & Liabilities***	***Investments in Unlisted Equities***	***Loans & Advances***
2013 - 2014	*9700000*	*193127000*	*33695343*	*343138536*	*195664242*	*9309000*
2014 - 2015	*9700000*	*193127000*	*33695343*	*366571381*	*245469272*	*12372759*
2015 - 2016	*9700000*	*193127000*	*17000000*	*326629530*	*248829320*	*22372759*

2016 - 2017	*9700000*	*193127000*	*89473600*	*347895505*	*0*	*34872759*
2017 - 2018	*9700000*	*193127000*	*35971856*	*336567445*	*157129161*	*19317000*

3. It may kindly be seen from the abovementioned Financial Analysis of M/s Castle Suppliers Private Limited that there has been Sale of Unlisted Equities from its Asset amounting to 24,88,29,320/- during F.Y. 2016-2017 and proceeds of this Sale has been invested in giving loans. Accordingly, in order to corroborate it, Statement of Company's o HDFC Bank Account number 01052560002804 was procured. Soft copy of this Ban. Statement is placed in this file in the accompanying Pen Drive. An analysis of this accoun shows considerable transactions with many Entities, including many suspicious entities These entities include M/s Casio Vintrade Private Limited, M/s Solvent Vyapaar Privat Limited, M/s Corum Securities Private Limited and others.

4. In order to verify the genuineness of Sale of Unlisted Equities from the books of M Castle Suppliers Private Limited, a summon dated 27/10/2021 under Section 131 of th Income-tax Act, 1961 was sent to the Company, which has remained unanswered, there leaving the issue suspicious.

The information itself is un-substantiated, unverified and unfounded. The investigation report has stated nature of enquiry as 'Open enquiry' thus as jurisdictional Assessing Officer should ought to make further enquiry and should not based the opinion on 3rd party allegations "from credible sources" which are also unidentified ones.

It is worthwhile to mention that Casio Vintrade Pvt Ltd. And Solvent Vyapaar Pvt Ltd. are the group Companies of the assessee. In the year under consideration there is no transactions with Casio Vintrade Pvt Ltd and Corum Securities Private Limited. The Ledger account of FY 2016-17 (AY 2017-18) of Solvent Vyapaar Pvt Ltd is enclosed for reference. Please note there is no transaction during the year with said company.

It is pertinent to mention that these entities Casio Vintrade Pvt Ltd. And Solvent Vyapaar Pvt Ltd were subject to scruting assessment u/s. 143(3) of the Act by respective JAO for relevant AY 2017-18 and there is no adverse or doubt about the identity creditworthiness or business activities about any of them. The master data as per ROC records of their entities are also enclosed. The documents will enable you to frame a rationale opinion and reasonable belief about the association of the assessee and their standing.

We are also submitting the detailed bank books with bank statement. We seek an opportunity for personal hearing to explain the facts with documentary evidences before your kind self."

6. I find as rightly pointed out by Mr. Bhattacharya, representing the respondents, that the assessing officer had afforded opportunity of hearing to the petitioner and, prima facie, there does not appear to be violation of the principles of natural justice. It may, however, be noted that having regard to the safeguards provided in reopening the assessment, as is apparent from the scheme of section 148 of the said Act, and post the notification of the Finance Act 2021, w.e.f. 1st April 2021, ordinarily, the assessment cannot be reopened unless the provisions of Section 148A of the said Act which incorporates in itself safeguards provided for reopening are complied with. As would appear from the provisions of Section 148 of the said Act that the same deals with the issue of notice where income has escaped assessment. Section 148A deals with the procedure for conducting enquiry, providing ample opportunity prior to issuance of the notice under section 148 of the said Act. As it would further appear from section 148A that the assessing officer, before issuing the notice, can either conduct an enquiry, if required, with prior approval of the specified authority having regard to the information which suggests that income chargeable to tax has escaped assessment. The other option available is under

clause (b) of section 148A, which suggests that the assessing officer shall, before issuing any notice under section 148, provide an opportunity of being heard to the assessee with a prior approval of the specified authority by serving him a notice to show cause within such time as may be specified in the notice. The provisions of Section 148A(c) provides for furnishing of reply by the assessee while the provisions of section 148(d) of the said Act provide that the assessing officer shall decide on the basis of the materials available on record, including the reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order with the prior approval of the specified authority within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires.

7. Admittedly, in this case, a notice under section 148A(b) was issued. As such, it was obligatory on the part of the assessing officer, having regard to the scheme of the said Act and the provisions contained in section 148A(d) of the said Act to decide on the basis of the materials available on record, including the reply of the assessee, whether or not it was a fit case to issue a notice under section 148 of the said Act.

8. Admittedly, I find that in the instant case, the assessing officer has concluded that the claim of the assessee is not acceptable in the light of the information provided by the Investigation Directorate. It has further proceeded to hold that the information received from the investigation wing cannot be fully cross-verified with meagre submission made by the assessee. I,

however, notice that apart from the aforesaid, no reasons whatsoever has been provided by the assessing officer to dislodge the case made out by the petitioners. Since appropriate safeguards have been provided for in section 148A of the said Act and since an opportunity to respond is provided, in my view, such opportunity should be a meaningful opportunity and not mere rejection of the response filed by the assessee, as not being accepted in the light of the information available by them. If the assessing officer was to reject the contention of the petitioner, appropriate reasons as to why the same was found to be unacceptable ought to have been quoted. The assessing officer has chosen not to discredit the audited accounts of the petitioner while considering the response. In this context, it may be noted that the Hon'ble Division Bench of this Court, in the judgments delivered in the case of ***Somnath Dealtrade Pvt.Ltd.*** (supra) and in the case of ***Mustafa Huseni Chunwala*** (supra) has clearly concluded that there should be a meaningful and effective opportunity of hearing and not an empty formality. The assessing officer ought not to have dismissed the response filed by the petitioner by holding out the same not to be acceptable without the same being substantiated by reasons.

9. In the light of the above, I am of the view that the order impugned and the notice under Section 148 cannot be sustained, the same are accordingly set aside and the matter is remanded back to the assessing officer for a fresh decision on merits.

10. The assessing officer, before passing an order under Section 148A(d) of the said Act, shall give an opportunity of hearing to the petitioner and shall deal

with the response filed by the petitioner in a meaningful manner having regard to the observations made hereinabove.

11. It is made clear that the above decision shall be taken within a period of one month from the date of communication of this order.

12. The petitioner is also directed to cooperate with the assessing officer by producing documents as and when called for.

13. With the above observations and directions, the writ petition stands dispose of.

14. There shall be no order as to costs.

(RAJA BASU CHOWDHURY, J.)

R. Bose/akg/