05.03.2026
Item No.A.283
Ct. No.237
Suman

WPA 16737 of 2024

Vishnu Highrise Private Limited
-Vs-
Union of India and Ors.

Mr. Rajesh Kumar Mishra
Mr. Sutirtha Das
..for the petitioner

Mr. Amit Sharma
Mr. Abhishek Kumar Agrahari
..for the respondents.

The petitioner challenges an order passed under Section 148A(d) of the Income Tax Act, 1961 by the Income Tax Officer, Ward 5(1), Kolkata, dated April 24, 2024.

Mr. Rajesh Kumar Mishra, learned advocate appearing for the petitioner, seeks cancellation of the said order solely on the ground that one Amit Kumar Agarwal, whose statement forms the basis of the impugned order, was not allowed to be cross-examined.

It is submitted that, although the relevant jurisdictional Assessing Officer had fixed a date for the cross-examination of Amit Kumar Agarwal, the petitioner was not permitted to carry out the cross-examination, and the order under Section 148A(d) of the Income Tax Act, 1961 was subsequently passed.

Learned advocate for the petitioner contends that the impugned order has been vitiated on account of the failure to provide any opportunity to cross-examine Amit Kumar Agarwal. It is further submitted that the order dated April 24, 2024, cannot be regarded as a complete order since, despite fixing a date for cross-examination, the jurisdictional Assessing Officer passed the impugned order without completing the said process.

In support of his submission, the learned advocate has relied upon the judgment dated January 2, 2024, passed by a Division Bench of this Court **in MAT 1667 of 2023 (Gee Bee Nirman Co. Pvt. Ltd. vs. Income Tax Officer, Ward-5(1), Kolkata & Ors.)** as well as the judgment dated July 12, 2023, passed by a learned Single Judge in **WPO 1180 of 2023 (Howrah Gases Limited vs. Assistant Commissioner of Income Tax, Circle–1(1), Kolkata & Ors.)**.

Learned advocate appearing for the Assessing Officer, on the other hand, submits that the petitioner has no right of cross-examination at the stage of an order passed under Section 148A(d) of the Income Tax Act, 1961. It is submitted that such an opportunity may be provided only at the stage of passing a reassessment order under Section 147 of the Act.

It is further submitted that this position has been clarified by a learned Single Judge of this Court by a judgment dated July 25, 2023, passed in **WPO 1302 of 2023 (M/s. Movement Traders Pvt. Ltd. vs. The Principal Commissioner of Income Tax (PCIT) & Anr.)**.

After hearing the parties, I do not find any ground to interfere with the order dated April 24, 2024.

The relevant portion of Section 148A is quoted below:

"***148A. Conducting inquiry, providing opportunity before issue of notice under Section 148.***

The Assessing Officer shall, before issuing any notice under Section 148,-

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide any 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 seven days and but not exceeding thirty 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 this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including 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 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;

Provided that the provisions of this section shall not apply in a case where.-

(a) a search is initiated under Section 132 or books of account , other documents or any assets are requisitioned under Section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under Section 132 or requisitioned under Section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assesse; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, [relate to, the assessee; or

(d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.]"

It is not in dispute that the order under Section 148A(d) of the Income Tax Act, 1961 was preceded by the issuance of a show-cause notice, giving an opportunity to the petitioner to submit a reply to the said notice, and the impugned order was passed upon consideration of the reply submitted by the petitioner.

It further appears that there is no dispute that the proceedings for reopening were initiated on the basis of the statement made by Amit Kumar Agarwal in connection with a search proceeding conducted under Section 132 of the Income Tax Act, 1961 at the premises of the Agarwal Group, of which he appears to be one of the directors.

The statement of Amit Kumar Agarwal was recorded under Section 132(4) of the Income Tax Act, 1961.

The relevant parts of the statement are quoted below:

"Question 36: I am showing you the page no.6 of the loose bunch marked and identified as "AGH-10" where it is shown to be received in cash of Rs.2,25,00,000/- from Vishnu High Rise Pvt. Ltd. and 2,50,000/- transferred in cash to Rajender Account under client name Uttam Modak. Please explain whether these transactions are part of your agreement.

Answer :I agree that the amount of Rs.2.25 crores was received in cash from Vishnu High Rise Pvt. Ltd. and there is transfer of cash of Rs.2.50 lacs to Rajender account under client name Uttam Modak. Further I can confirm that these transactions are not part of our agreement and not reflected in books of account."

I am of the view that, at the stage of issuance of proceedings under Section 148A of the Income Tax Act, 1961, the Assessing Officer is not required to arrive at a final conclusion regarding escapement of income. An order under Section 148A is required to be passed only on the basis of a prima facie finding with regard to such escapement in order to reopen the proceedings.

The scope of reopening proceedings under Section 147 of the Income Tax Act, 1961 is different from that of proceedings under Section 148A. While a proceeding under Section 147 involves a final and conclusive determination with regard to escapement of income, the proceeding under Section 148A is only for the purpose of arriving at a prima facie satisfaction to initiate proceedings under Section 147 of the Income Tax Act, 1961.

In my view, at the stage of passing an order under Section 148A, cross-examination of a person whose statement has been relied upon is not required. Such cross-examination would become necessary only at the stage when an order under Section 147 of the Income Tax Act, 1961 is to be passed and the statement is relied upon by the Assessing Officer.

Merely because the Assessing Officer asked Amit Kumar Agarwal to appear before him for the purpose of cross-examination, it cannot be said that he was under any obligation under Section 148A of the Income Tax Act, 1961 to complete the process of cross-examination.

In that view of the matter, I do not find any justification to entertain this writ petition.

Accordingly, **WPA 16737 of 2024** is **dismissed**.

Needless to mention that the opportunity of cross-examination shall be provided to the petitioner in the light of this judgment.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, *J.*)