IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10219 of 2022
Date of Decision : 02.06.2022

Anshul Jain ….Petitioner

Versus

Principal Commissioner of Income Tax and anr. …..Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Alok Mittal, Advocate for the petitioner.

Mr. Sandeep Goyal, Senior Standing Counsel and
Mr. Vaibhav Gupta, Junior Standing Counsel
for the respondents.

PANKAJ JAIN, J.

By way of present writ petition the petitioner has challenged the order dated 31.03.2022 (Annexure P-4) issued under Section 148A(d) of the Income Tax Act, 1961 (for short 'the Act') and impugned notice dated 31.03.2022 (Annexure P-5) whereby the objections raised by the petitioner to the notice issued under Section 148A(b) have been dismissed.

The petitioner is an assessee under the Act. As per the petitioner he filed his return for the assessment year 2018-2019 which was duly assessed vide order dated 26.03.2021. On 14.03.2022 he was served with the notice under Section 148A(b) of the Act (Annexure P-1) claiming escapement of income chargeable to tax for the assessment year 2018-2019. Along with the notice the petitioner was also supplied with a information forming basis of notice under Section 148A(b). The petitioner responded to the same vide communication dated 21.03.2022 which stand rejected

vide impugned order dated 31.03.2022 (Annexure P-4).

Counsel for the petitioner contends that the impugned order is erroneous, as the same has been passed without considering the objections raised by the petitioner. He thus prays that the order passed under Section 148A(d) dated 31.03.2022 and the consequential notice issued under Section 148 of the even date be quashed.

We have heard learned counsel for the parties and have carefully gone through the records of the case.

The primary issue that would arises in the present writ petition is :-

> "Whether at this stage of notice under Section 148, writ Court should venture into the merits of the controversy when AO is yet to frame assessment/reassemment in discharge of statutory duty casted upon him under Section 147 of the Act ?"

The debate is not new. While dealing with the similar situation under the old Act i.e. Indian Income Tax Act, 1922, Division Bench of this Court in '**Lachhman Das Nayar and others vs. Hans Raj Puri, Income-Tax Officer, Amritsar and others, 1953 AIR (P&H) 55**, held that -

> "*An examination of the scheme of the Act and the words used in section 34 of the Act and the various cases that I have referred to above show that the legislature has entrusted the determination of facts and of law to the Income-tax Officers. A particular machinery has been set up under the Act "by the use of which alone" total assessable income for the purposes of the Income-tax is to be ascertained and jurisdiction to question the assessment otherwise than by the use of this machinery is incompatible with the scheme of the Act. The*

> *challenge of the action of the Income-Tax Officer by a writ prohibition or mandamus is , therefore, not available to the assessee."*

In '**Rasulji Buxji Kathawala vs. Income Tax Commissioner, Delhi and another' (Civil Writ No.44 of 1955, D/d. 2.4.1956)** while dealing with the similar situation under the 1922 Act, Division Bench of Rajasthan High Court held that -

> *"But where as in this case no part of the Act is being attacked, there is, in our opinion, no justification for us to intervene at this stage when other remedies which arc not necessarily onerous are still open to the applicant under the Act. We, therefore, refuse to intervene at this stage in this case, and leave it to the applicant to pursue his remedies under the Income-tax Act so far as the question of his charge-ability to income-tax under the Act, or other matters are concerned."*

Division Bench of this Court in the case of **'Sumit Passi vs. Assistant Commissioner of Income-Tax', (2016) 386 ITR**, held that -

> *"29. ....The reasons assigned by the Assessing Officer to tentatively believe that taxable income has escaped assessment cannot be brushed aside at the threshold without a fact-finding procedure, more-so when the petitioners are not remediless and have got equally efficacious recourses under the Act.*
>
> *30. A somewhat similar dictum is discernible from CIT v. Chhabil Dass Agarwal (2014) 1 SCC 603 as it holds that the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an*

appeal to the Commissioner of Income Tax (Appeals).

31. Having held so, it is not expedient for this Court to express its opinion on the rival submissions as it may unwittingly cause prejudice to either party. Suffice it to say that no case to quash the notice(s) issued under Section 148 read with Section 147 of the Act or the order(s) rejecting the objections, is made out at this premature stage."

Delhi High Court in **W.P.(C) 5787/2022** titled as **Gulmuhar Silk Pvt. Ltd. vs. Income Tax Officer Ward 10(3) Delhi,** while considering the same question held that:

"6. Though it is the petitioner's case that the impugned order is erroneous on facts, yet this Court is of the opinion that the petitioner would have ample opportunity during the course of proceedings before different statutory forums to show that the finding of fact arrived at was erroneous. Moreover, at this stage, no assessment order has been passed and it has only been observed that it is a fit case for issuance of notice under Section 148 of the Act. In fact, the Supreme Court in ***Commissioner of Income Tax and Ors. Vs. Chhabil Das Agarwal, (2014) 1 SCC 603*** *has held that as the Income Tax Act, 1961 provides complete machinery for assessment/ reassessment of tax, assessee is not permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226."*

Supreme Court in the case of **'Raymond Woollen Mills Limited vs. Income Tax Officer, Centre XI, Range Bombay and others' (Civil Appeals No.1972 of 1992 with No.1973 of 1992. D/d 17.12.1997)**, held that -

"3. In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie

> *some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority."*

Thus, the consistent view is that where the proceedings have not even been concluded by the statutory authority, the writ Court should not interfere at such a pre-mature stage. Moreover it is not a case where from bare reading of notice it can be axiomatically held that the authority has clutched upon the jurisdiction not vested in it. The correctness of order under Section 148A(d) is being challenged on the factual premise contending that jurisdiction though vested has been wrongly exercised. By now it is well settled that there is vexed distinction between jurisdictional error and error of law/fact within jurisdiction. For rectification of errors statutory remedy has been provided.

In the light of aforesaid settled proposition of law, we find that there is no reason to warrant interference by this Court in exercise of the jurisdiction under Article 226/227 of the Constitution of India at this intermediate stage when the proceedings initiated are yet to be concluded by a statutory authority. Hence the writ petition stands dismissed.

Needless to say that nothing herein observed shall be construed as an opinion on the merits of the case.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

June 02, 2022
Pooja sharma-I

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