

**A.F.R.**

Neutral Citation No. - 2024:AHC:87488-DB

**Court No. - 39**

**Case :-** WRIT TAX No. - 799 of 2024

**Petitioner :-** Rahul Sachan

**Respondent :-** Income Tax Officer

**Counsel for Petitioner :-** Rahul Agarwal

**Counsel for Respondent :-** Gaurav Mahajan

**Hon'ble Saumitra Dayal Singh,J.**

**Hon'ble Donadi Ramesh,J.**

1. Heard Shri Rahul Agarwal, learned counsel for the petitioner and Shri Gaurav Mahajan, learned Senior Standing Counsel, for the revenue.

2. Challenge has been raised to the order dated 27.03.2024 passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and the consequential notice of the same date, issued under Section 148 of the Act for the Assessment Year 2020-21.

3. For the Assessment Year 2020-21, the petitioner had filed his regular return of income. However, no scrutiny assessment arose in his case. On 19.02.2024, a show cause notice was issued to the petitioner under Section 148A(b) of the Act, proposing to initiate reassessment proceeding for the Assessment Year 2020-21. The annexure to that notice contains the summary of information on which such proceedings were proposed to be initiated. It reads as below :

*"As per information flagged under Risk Management strategy(RMS) formulated by Central Board of Direct Taxes (CBDT), it has been noticed that you have supplied goods /services of Rs. 73968000/- during financial year 2019-20 (relevant to assessment year 2020-21) to M/s Everett Infra and Engineering Equipments Private Limited. On the basis of enquiries conducted by the Income Tax Department it has been established the M/s Everett Infra and Engineering Equipments Private Limited is not doing any actual business activities and*

*providing accommodation entries. This company is involved in receiving and giving bogus contracts/sub-contracts and raising invoices without delivery of any actual goods/services. The company is merely working as entry/exit provider.*

*As you have entered into the transaction with this bogus company which is involved in providing accommodation entries the supply of goods/services to this company also appears to be bogus. It leads to inference that you are also one of the participants the tax evasion mechanism of above company. The above information suggests escapement of income in your case. Please also refer to attachment of this show cause notice which encloses sheet containing details of information suggesting escapement of income in your case. The details of information has also been elaborately discussed in above para which may also be referred to.*

*In the light information (as discussed in above para) suggesting escapement of income in your case in assessment year 2020-21, please submit your response on the issue raised in this show cause notice by the due date, as mentioned in this notice, positively."*

4. The petitioner responded to the above notice and submitted a detailed reply dated 18.03.2024. In that, the petitioner referred to entries recorded in his books of accounts and other materials to assert that he had actually sold goods to M/s Everett Infra and Engineering Equipments Pvt. Ltd. (hereinafter referred to as the 'purchaser'). He also referred to the statement of profit and loss account of the purchaser to assert that the 'purchaser' had disclosed its revenue receipts in excess of Rs. 290 crores, for the Assessment Year 2020-21.

5. Thereafter, the petitioner's Assessing Authority passed the impugned order under section 148A(d) of the Act. It has rejected the petitioner's objection after relying on oral statements of certain entities, recorded during the course of other/search proceedings (not involving the petitioner or the 'purchaser'), as also on the reports of the Inspector of Income Tax, Central Circle-19, New Delhi, as received by the Assessing Authority. Also, reference has been made to the fact that notices/summons issued to the 'purchaser', arising from the information received from the Inspector of the Income Tax, have remained unresponded. The above information was communicated to the petitioner's Assessing Authority by the Deputy Commissioner of

Income Tax, Central Circle-19, New Delhi.

6. In such fact background, learned counsel for the petitioner would submit, the petitioner's objections as to absence of relevant material, have remained from being considered. After taking note of those objections raised, the Assessing Authority has proceeded to reject the same, without giving even minimal reasons to reject the objections. In his submission, though the statute has been amended and the formal requirement to record 'reason to believe' to initiate reassessment proceedings does not exist, at the same time, the amended provision itself obligates the assessing authority to 'consider the reply' submitted in response to the show cause notice issued under Section 148A(b) of the Act. Only on such consideration, the assessing authority may 'decide', on the strength of material available on record (including the reply of the assessee), whether it is a 'fit case' to initiate reassessment proceedings. That exercise has not been done. The order passed under Section 148A(d) of the Act is wholly non-speaking. It has been passed in a perfunctory manner with a pre-conceived notion. Therefore, the same may never be sustained as jurisdiction has not arisen to reassess the petitioner for the Assessment Year 2020-21.

7. On the other hand, learned counsel for the revenue would contend, the pre-requirement of 'reason to believe' has been done away. Therefore, the strict test of existence of such 'reason to believe'-to initiate reassessment proceedings cannot be reintroduced by reading the amended statute in the manner suggested. In his submission, insofar as show cause notice was issued to the petitioner and its reply was 'considered' before the impugned order [under Section 148A(d)] was passed, no procedural lapse has occurred. The manner or words in which decision has been recorded may not be justiciable and it may not be read in a manner as may resurrect or reintroduce the pre-

existing requirement of recording of 'reason to believe' (as it existed under the unamended law).

8. Coming to the facts of the case, he would submit, sufficient material exists to allow the reassessment proceedings to arise on the test of subjective 'satisfaction' recorded by the assessing authority that it was a 'fit case' to initiate reassessment proceedings against the petitioner for the Assessment Year 2020-21. That subjective 'satisfaction' has arisen on the consideration of the facts that the Inspector of Income Tax had disclosed in his successive reports that at none of the places of business of the 'purchaser' namely, (i) 2664/2/3T/F, Beadonpura Bank Street, Karol Bagh, Delhi-110005; (ii) Y.C. Co-working Space, 3rd floor, Plot No. 94, Dwarka Sector-13, Opposite Metro Station, New Delhi-110078; (iii) M4, (ground and First Floor), South Extension II, South Delhi, New Delhi-110049; and (iv) RH H-4AM, Mahavir Enclave, Palam Colony, New Delhi-110045 any business activity of the petitioner was found existing. Also, the 'purchaser' and its key person had not responded to the notices and summons issued to them, to ascertain the correct facts. Once these facts exist, according to learned counsel for the revenue, the subjective 'satisfaction' recorded by the assessing authority to reassess the petitioner, may not be faulted.

9. Having heard learned counsel for the parties and having perused the record, in the first place, it needs no elaboration that the pre-existing rule, to record 'reason to believe' does not exist. That rule required : existence of relevant material to indicate escapement of income from assessment; application of mind by the assessing authority to that material to entertain relevant reasons; formation of belief that any income had escaped assessment, based on such reasons. Therefore, the

precedential law that arose in that statutory context, is neither relevant nor the same requires any consideration, at this stage.

10. Section 148A of the Act reads as below :

*“<sup>1</sup>[Conducting inquiry, providing opportunity before issue of notice under section 148.*

*148A. 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 an opportunity of being heard to the assessee, <sup>2</sup>[\*\*\*] 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*

<sup>1</sup>Inserted by the Finance Act, 2021, w.e.f. 1-4-2021.

<sup>2</sup>Words "with the prior approval of specified authority," omitted by the Finance Act, 2022, w.e.f. 1-4-2022.

*assessee; 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, 70[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.]*

*Explanation.-For the purposes of this section, specified authority means the specified authority referred to in section 151.]*

11. What is now required by way of a pre-condition to initiate reassessment proceedings is : the information/objective material that 'suggests' escapement of income; the conduct of an 'enquiry', if required, with respect to that; issue of a show cause notice to grant the assessee an opportunity to respond to the information/objective material that income chargeable to tax had escaped assessment in his case; a 'decision' of the assessing officer (on the basis of that material and the reply furnished by the assessee), that the material that may have come to the hands of the assessing authority 'suggests', it is a 'fit case' to initiate reassessment proceedings under Section 148 of the Act.

12. Thus, the legislature has carefully departed from the strict test of recording of 'reason to believe' and substituted the same with a lighter and more subjective 'decision' of the assessing officer that it is a 'fit case' to reassess the assessee, based on the 'suggestion' (emerging from perusal of the 'information' i.e. objective/relevant material), that income had escaped assessment at the hands of the assessee.

13. True, in reaching such 'decision', the assessing authority is obligated to consider only that material that may be relevant (and not extraneous) and the reply that may have been furnished by the assessee, at the same time, it is not the statutory law that he must

record specific/objective reasons to deal with each and every objection, that may be raised. The statute only requires an overall or broad consideration of the reply furnished by the assessee, to reach a 'decision' that it is 'fit case' to initiate reassessment proceedings. To read-recording of exact reasons (to reject any objection), into the language of Section 148A of the Act would be to indirectly reintroduce the requirement to record "reasons to believe", as a pre-condition to initiate reassessment proceedings. That requirement of law has been specifically and completely, done away.

14. Thus, read in conjunction, Section 148A(b), (c) and (d) would require that assessing authority may not act whimsically or capriciously or on extraneous material or in ignorance of the reply that may have been furnished by the assessee (to the show cause notice issued under Section 148A(b) of the Act), at the same time, that provision does not obligate the assessing authority to specifically deal with the individual objections, pointwise, or to record detailed reasons while making the 'decision' that it is a 'fit case' to initiate reassessment proceedings, in the case of an assessee.

15. Therefore, the new statutory test laid down under Section 148A requires-in essence, the concern voiced by the assessee [in his reply to notice under Section 148A(b)], either as to absence of 'information'/relevant material or as to lack of bonafide/prudent 'suggestion' arising therefrom, has to be addressed, upon requisite application of mind, seen to exist on a plain reading of the 'decision' [contained in the order passed under Section 148A(d) of the Act, that it is a 'fit case' to initiate reassessment proceedings, for reason of 'suggestion' arising therefrom, that income had escaped assessment. Thereafter, as before, all merit issues/defences may remain open to consideration in the reassessment proceedings. The 'decision' that it is

a 'fit case', to initiate reassessment proceedings is-as the language plainly suggests a reflection of desirability perception/evaluation of the assessing authority-to initiate reassessment proceeding. To that extent it is a provision to arm the revenue authority, to expose an assessee to a proceeding to reassess him.

16. So long as that exercise is *bona fide* and not mindless, perverse or patently contrary to the law etc., and so long as that 'decision' made by the assessing authority-to initiate such reassessment proceedings is not unconnected/disjuncted or contrary to the 'suggestion' directly arising from the 'information'/relevant material received by him-that income has escaped assessment, no minute/detailed examination of that 'decision' is required to be made.

17. In the present facts, the 'decision' of the assessing authority to initiate reassessment proceedings in the case of the petitioner for Assessment Year 2020-21 has arisen on the 'information' received that the 'purchaser' does not exist. That is contained in the reports of the Income Tax Officer with respect to the four addresses of the 'purchaser'. No direct evidence was disclosed by the petitioner, (in his reply), - to doubt the existence of that 'information'. The 'suggestion' as to escapement of income qua sales made to the (non-existing) 'purchaser', inheres in it. Thus, the 'information' is relevant to the 'suggestion' as to 'escapement of income' at the hands of the petitioner.

18. As to the non-existence of the 'purchaser', that satisfaction further appears to have arisen on the conduct of the purchaser in not responding to any of the notices and summons issued. Third, the assessing officer has taken note, during the course of a search proceedings and upon recording of statement of a third party, it was also suggested that the 'purchaser' did not exist. Such facts had been clearly noted in the impugned order passed under Section 148A(d) of



the Act.

19. It may not be denied that the assessing authority has not recorded any reason to squarely deal with the further objection raised by the petitioner that there existed details of activity and income of the purchaser as was available on the website of the Registrar of Companies. In that regard, the petitioner had also pointed out that the purchaser company continues to exist and it is active on the MCA portal. As noted above, that was not a mandatory condition to be fulfilled, at this stage. Also, in absence of any obligation in law, to record a categorical finding to reject any particular objection (at this preliminary stage), no fault exists in the initiation of reassessment proceedings occasioned by an over all consideration of the 'information'/relevant material. As noted above, the 'suggestion' is clearly seen to have arisen on the own strength of the 'information'/relevant material. Thus, the subjective 'decision' that it is a 'fit case' to initiate reassessment proceedings, (notwithstanding the objection raised by the petitioner), may not be faulted.

20. Suffice to note, all merit objections that may be raised and the manner in which they may be raised by the assessee in response to a notice issued under Section 148A(b) of the Act are not required to be decided pointwise, at the stage of assumption of jurisdiction i.e. at the stage of order under Section 148A(d) of the Act. Strictly speaking that requirement of law did not exist even under the unamended law. Even then, as noted above, the strict test of 'reason to believe' having been done away and replaced with the more subjective and lighter test of 'suggestion' arising from the 'information' received by an assessing officer-that income may have escaped assessment, we are not inclined to lay down a stricter test (to be satisfied by the assessing authorities), while making a subjective 'decision', to initiate the reassessment

proceedings.

21. Accordingly, the writ petition lacks merit and is **dismissed**. However, the assessment proceedings may continue and be concluded strictly in accordance with law without being prejudiced by any observation made in this order. Thus, all merit objections/defences are open to the petitioner. No order as to costs.

**Order Date :- 15.5.2024**

SA

**(Donadi Ramesh, J.)      (S.D. Singh, J.)**