



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 7062/2022

M/s Chetak Enterprises Ltd., Petch Area, Circuit House Road,
Opp. Dak Bungalow, Nimbahera, District Chittorgarh, Rajasthan
Through Chief Financial Officer Manoj Lodha.

-----Petitioner

Versus

The Assistant Commissioner Of Income Tax, Central Circle-1,
Udaipur, Mumal Tower, Saheli Marg, Udaipur, Rajasthan.

-----Respondent

For Petitioner(s) : Mr. R.V. Eswar, Sr. Adv. assisted by
Mr. Piyush Goyal, through V.C.
For Respondent(s) : Mr. K.K. Bissa

**HON'BLE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE KULDEEP MATHUR**

Judgment

REPORTABLE

20/03/2023

Heard on admission.

2. Learned senior counsel for the petitioner argued that re-opening of the assessment in respect of assessment year 2018-2019 is illegal, without jurisdiction and *void ab initio*. The principal submission of the learned senior counsel for the petitioner is that the petitioner had submitted its return of income for the assessment year 2018-2019 and regular assessment order was passed as scrutiny assessment under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the assessing authority on 15.07.2021. The return of income was filed by the assessee under Section 139 of the Act on 30.10.2018



declaring its income of Rs.42.44 crores along with tax audit report under Section 44AB of the Act and the assessment in terms of Section 115JB of the Act was completed by the assessing authority, who also made addition by *ad hoc* disallowance of certain expenses.

3. A notice under Section 148A(b) of the Act was issued on 10.03.2022 providing an opportunity of hearing against proposed re-opening of the assessment on receipt of information based on search and survey action under Section 132 and 133 of the Act conducted on M/s APCO Infratech Private Limited and other associates on 15.09.2021 by DDIT (Investigation) Unit-4(4) Mumbai. As the re-opening was without the authority of law, the petitioner submitted a detailed reply by stating that at the time when original assessment was carried out, all books of accounts, relevant documents, informations including the information relating to all transactions between the petitioner M/s Chetak Enterprises Limited and M/s. APCO Infratech Private Limited were disclosed and only after due consideration of the entire materials, assessment order was passed.

4. The submission of the learned senior counsel for the petitioner is that merely because a search and survey was conducted on M/s. APCO Infratech Private Limited, it could not provide a basis for the respondents to re-open assessment by invoking provisions contained under Section 148A and 148 of the Act.

5. On the other hand, learned counsel for the respondent would submit that though the petitioner was subjected to scrutiny assessment and the original order of assessment was passed on



15.07.2021 on the basis of the declared income of Rs.42.44 crores, subsequent thereto, during a search and survey conducted on M/s. APCO Infratech Private Limited, it was *prima facie* revealed that various transactions between the petitioner and M/s. APCO Infratech Private Limited were found to be in the nature of circular transactions by engaging in raising fake invoices. Therefore, power under section 148A of the Act was invoked, opportunity of hearing was afforded and a detailed order under Section 148A(d) of the Act was passed after due consideration of the reply of the petitioner.

6. In the present case, what we find is that though initially at the time of scrutiny assessment under Section 143(3) of the Act by the assessing authority on 15.07.2021, assessment was made on the basis of the declared income of Rs.42.44 crores, as is evident from notice under Section 148A(b) of the Act, on 15.09.2021, a search and survey action under Section 132 and 133 of the Act was conducted on M/s. APCO Infratech Private Limited and other associates, with whom the petitioner had declared certain transactions while submitting its return earlier which was made basis for assessment. However, subsequent to that assessment order passed in the case of the petitioner on 15.07.2021, search and survey operation was carried out on M/s. APCO Infratech Private Limited. The petitioner was afforded an opportunity of hearing and it submitted a detailed reply. The competent authority examined the reply of the petitioner and passed a detailed order under Section 148A(d) of the Act. It was followed by notice under Section 148 of the Act.



7. As is revealed from the order dated 30.03.2021 passed under Section 148A(d) of the Act, when search and survey action under Section 132 and 133 of the Act was conducted on M/s. APCO Infrstech Private Limited and other associates on 15.09.2021 by the jurisdictional DDIT (Investigation), during post search analysis of the statement of evidence gathered during the search, issue of circular transactions on which escapement/concealment of income or ineligible deductions/expenses claimed were notified for the assessment year 2018-2019. The order further shows that from the perusal of the GST returns that M/s. APCO Infrstech Private Limited has entered into circular transactions with the petitioner M/s. Chetak Enterprises Limited in financial year 2017-2018 wherein bogus bills have been raised by M/s. APCO Infrstech Private Limited on the petitioner M/s. Chetak Enterprises Limited and *vice versa* in order to artificially inflate turn over without executing any work. The competent authority further noticed that the petitioner M/s. Chetak Enterprise Limited had raised invoice of Rs.72 crores on M/s. APCO Infrstech Private Limited on 31.03.2018, which in turn had raised invoice of almost identical amount i.e. Rs.75 crores on 31.03.2018. The giving of sub-contract to each other at the fag end of the year and that too, for almost same amount gave rise to suspicion that no actual work was actually being done and fictitious circular transactions may have been executed for the purpose of raising turn over limit and garnering better credit rating.

8. The order further reveals that the petitioner's office was covered under Section 133A of the Act and statement of one of its



Director was recorded. He was asked for the assessment year 2017-2018 of M/s. APCO Infratech Private Limited in the books of the petitioner whereby M/s. APCO Infratech Private Limited is debited to the tune of Rs.79.20 crores and a sum of Rs.82.50 crores is credited. Though, stand of there being a sub-contract was raised, no documentary evidence in support of claim of executing works in compliance to execute the sub-contracts could be produced despite an opportunity was granted.

9. In the aforesaid background, the authority recorded that as the petitioner-assessee has not produced any satisfactory documentary evidence in support of executing the sub-contracts made between the petitioner M/s. Chetak Enterprises Limited and M/s. APCO Infratech Private Limited, the assessee having also failed to produce bills and vouchers with regard to transactions with M/s. APCO Infotech Private Limited, a case of reopening of assessment is made out. We, thus, find that the material information collected by the respondent was made a basis to arrive at the reason to believe that the petitioner is engaged in raising fake invoices in executing circular transactions with M/s. APCO Infratech Private Limited. On such detailed consideration that income chargeable to tax to the tune of Rs.75 crores has escaped assessment for the assessment year 2018-2019, within the meaning of Section 147 of the Act, the authority considered the present case to be a fit case for issuance of notice under Section 148 of the Act for the assessment year 2018-2019.

10. Reliance has been placed by learned counsel for the petitioner on the judgment of this Court in the case of **Micro Marbles Private Limited vs. Office of the Income Tax Officer**



Ward-1 [D.B. Civil Writ Petition No.13719/2021, dated 04.01.2023]. On facts, that was a case where it was found that material referred to in the "reasons to believe" was not supplied to the petitioner, the entire proceedings for reopening of the assessment were found to be vitiated. However, in the present case, the petitioner was given due opportunity of hearing by giving notice under Section 148A(b) of the Act, to which he gave a detailed reply and thereafter detailed order under Section 148A(d) has been passed.

11. The 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. dated 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."

12. In '**Rasulji Buxji Kathawala vs. Income Tax Commissioner, Delhi and another'** (Civil Writ No.44 of 1955, dated 2.4.1956) while dealing with the similar situation under the 1922 Act, Division Bench of this 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 are 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."

13. While dealing with the similar situation under the old Act i.e. Indian Income Tax Act, 1922, Division Bench of the Punjab and Haryana High 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."

14. The Division Bench of the Punjab and Haryana High 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."

15. The 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."

16. Recently, a Division Bench of this Court in the case of **Laxmi Meena vs. Union of India & Ors. [D.B. Civil Writ Petition No.447/2023, decided on 15.02.2023]** held that in the matter of challenge to order passed under Section 148A of the Act followed by issuing notice under Section 148 of the Act, the petitioner had not alleged any procedural impropriety, irregularity



or violation of statutory provisions in the matter of initiation of proceedings or passing of any order under Section 148A(d) of the Act. The Division Bench relied upon the order passed by the High Court of Punjab and Haryana in the case of **Anshul Jain vs.**

Principal Commissioner of Income Tax [CWP

No.10219/2022, decided on 02.06.2022]. It was held as

under:

"8. 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."

17. The SLP preferred against the order passed in the case of Anshul Jain (supra), was dismissed by Hon'ble Supreme Court vide order dated 02.09.2022 which reads as under:-

"1. What is challenged before the High Court was the re-opening notice under Section 148A(d) of the Income Tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

2. Under the circumstances, the High Court has rightly dismissed the writ petition.

3. No interference of this Court is called for.

4. The present Special Leave Petition stands dismissed.

5. Pending applications stand disposed of."



18. The Division Bench taking into consideration the settled legal position, dismissed the petition giving liberty to the writ petitioner to avail the remedy in the proceedings subsequent to notice under Section 148 of the Act.

19. In view of the above considerations, no case is made out for interference at this stage. The writ petition is, therefore, dismissed, however, reserving liberty to the petitioner to raise all the objections at the subsequent stages after issuance of notice under Section 148 of the Act and re-assessment proceedings.

(KULDEEP MATHUR),J

(MANINDRA MOHAN SHRIVASTAVA),ACJ

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