



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

D.B. Civil Writ Petition No. 8429/2023

Jugal Kishore Lohiya S/o Asha Ram Lohiya, Aged About 66 Years,
R/o C-74, 1St Extension, Ganpati Bhawan, Lok Seva, Hospital
Road, Kamla Nehru Nagar, Jodhpur (Raj.) - 342001.

-----Petitioner

Versus

1. Principal Chief Commissioner Of Income Tax, Jaipur
Central Revenue Building, B.d. Road, Jaipur.
2. Income Tax Officer (Ito), Ward - 3(1), Jodhpur,
Rajasthan.
3. Central Board Of Direct Taxes, Through Chairman,
Department Of Revenue, Ministry Of Finance, North Block,
New Delhi.

-----Respondents

For Petitioner(s) : Mr Sharad Kothari, Mr Mayank Taparia
For Respondent(s) : Mr K.K.Bissa, Mr G.S.Chouhan

**HON'BLE MR. JUSTICE VIJAY BISHNOI
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

Judgment / Order

04/08/2023 (PER HON'BLE VIJAY BISHNOI,J.)

1. This writ petition is filed by the petitioner challenging the order dated 05.04.2023 passed by assessing officer under Section 148A(d) of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act'). The petitioner has also challenged the notice dated 05.04.2023 issued by the assessing officer under Section 148 of the Act.

2. Brief facts of the case are that a notice under Section 148A(b) of the Act dated 28.02.2023 was issued to the petitioner



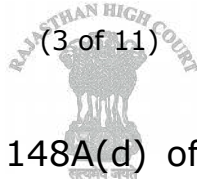
by the assessing officer to show cause why a notice under Section 148 of the Act should not be issued. It is stated in the notice that as per the information the income chargeable to tax for the assessment year 2016-17 has escaped assessment within the meaning of Section 147 of the Act. The notice dated 28.02.2023 further states that as per the information available with the assessing officer, the petitioner has entered into the following transaction:

Sr. No	Information Description	Information Value
1.	Purchased immovable property valued at Rs.30,00,000/-	1,59,00,000/-
2.	TDS Statement-Payment of consideration for purchase of immovable property	25,00,000/-
3.	TDS Statement-Interest other than interest on securities	45,194/-

3. It is noticed that the petitioner has not filed return of income for assessment year 2016-17.

4. After receiving the said notice, as per the petitioner, he immediately raised concern that though in the notice dated 28.02.2023, it is mentioned that information has been enclosed with the notice, but no such detail/information has been attached along with the said notice and thereafter, the petitioner submitted a detailed reply to the notice along with documents such as bank details, income tax returns of the joint owners of the property etc.

5. Considering the reply to the notice filed on behalf of the assessee, the assessing authority has passed the order dated



05.04.2023 under Section 148A(d) of the Act and found it a fit case of issuing notice under Section 148 of the Act. The order under Section 148A(d) of the Act proceeded with the notice under Section 148 of the Act.

6. Assailing the order dated 05.04.2023 passed under Section 148A(d) of the Income Tax Act and the consequential reassessment notice issued under Section 148 of the Act, learned counsel for the petitioner has submitted that reassessment proceedings are barred by limitation in terms of Clause(a) of sub-Section (1) of Section 149 because the informative value happened to be less than Rs.50 lac and three years from relevant assessment year have elapsed.

7. It is also contended that the order under Section 148A(d) of the Income Tax Act has been passed on the basis of surmises and conjectures.

8. It is further contended that reassessment notice under Section 148 of the Act has been issued in utter non-compliance of the notification dated 29.03.2023.

9. In support of the above contentions, learned counsel for the petitioner has placed reliance on decision of Bombay High Court dated 13.03.2023 rendered in **Anurag Gupta Vs. Income Tax Officer, Ward & Ors. (Writ Petition No.10184/2022)**. He has also placed reliance on decisions of Delhi High Court rendered in **Krishna Diagnostic Pvt. Ltd. Vs. Income Tax Officer Ward 14 (Writ Petition (C) No.7266/2023)** dated 25.05.2023 and



in **Balesh Jain Sons HUF Vs. Assistant Commissioner of Income Tax and Anr. (Writ Petition (C) No.11944/2022**

dated 06.09.2022 and prayed that the impugned order dated 05.04.2023 passed under Section 148A(d) of the Income Tax Act may be set aside and the consequential notice under Section 148 of the Income Tax Act dated 05.04.2023 may also be quashed and set aside.



10. Per contra, learned counsel for the Revenue Department has argued that the writ petition filed by the petitioner is liable to be dismissed as the same is not maintainable because the impugned order under Section 148A(d) and the subsequent notice under Section 148 of the Act have been passed in accordance with the provisions of law following the procedure prescribed in this regard.

11. It is also contended that the reassessment proceedings cannot be said to be time barred because the unexplained transaction represents income assessment amounting to Rs.1,84,45,194/-, which exceeds the prescribed monetary limit to Rs.50,00,000/-. It is also contended that the order dated 05.04.2023 passed under Section 148A(d) of the Act is not based on surmises and conjectures but on the basis of the information and material available with the assessing officer. It is submitted that the assessee has failed to furnish satisfactory explanation in response to the notice issued under Section 148A(d) of the Act and in such circumstances, the assessing officer, on the basis of



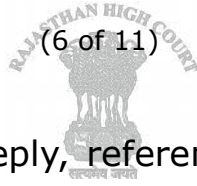
information and material available with it, has passed the order dated 05.04.2023 in accordance with law.

12. It is further submitted that the reassessment notice under Section 148 of Income Tax Act is perfectly legal and cannot be said to be issued in non-compliance of the notification dated 29.03.2023 because the notice under Section 148A(b) of the Act was issued on 28.02.2023 i.e. prior to the issuance of notification dated 29.03.2023.

13. In support of the above contentions, learned counsel for the respondents has placed reliance on decision of Division Bench of this Court dated 20.3.2023 rendered in ***M/s Chetak Enterprises Ltd. vs. The Assistant Commissioner of Income Tax (D.B.Civil Writ Petition No.7062/2022)***.

14. In the present case, a notice under Section 148A (b) of the Act has been issued to the petitioner by the assessing officer stating that as per the information available in his office, the assessee entered into certain transactions and details of those transactions are provided in tabulation form. It is also mentioned that the assessee did not file income tax return for the assessment year 2016-17.

15. As per the petitioner, he submitted two short replies, however, filed a detailed reply later on. Though in first line of the detailed reply, the petitioner has mentioned that the reply is in response to the show cause notice dated 14.10.2022 but in first



and second paras of the reply, reference of notice under Section 148A(b) of the Act dated 28.02.2023 is mentioned. It is also submitted that the petitioner was not in receipt of any information as mentioned in the notice dated 28.02.2023 as enclosed. He has stated that in the year 2015, he purchased one plot in the joint ownership of him, Anurag Lohiya and Swati Lohiya and no other immovable property has ever been purchased or sold by him. It is contended by the petitioner that the information available with the assessing officer is incorrect. Along with the reply, the petitioner has submitted bank statement of him and the copies of income tax returns for the year 2016-17 of Anurag Lohiya and Swati Lohiya have been attached.

16. In the last para of the reply, it is submitted by the petitioner that the TDS of Rs.4,523/- has been deducted on interest income of Rs.45,194/-. The petitioner has also emphasized that the assessing officer is required to comply with the procedure under Section 148A of the Act. It is also contended that as per clause (a) of sub-Section (1) of Section 149 of the Act, the reassessment proceedings cannot be opened as the escaped income assessment is below Rs.50,00,000/-.

17. The assessing officer, after taking into consideration the reply filed on behalf of the assessee, has concluded that as per the information available on tax payer annual summary report, the assessee has purchased two immovable properties amounting to Rs.1,59,00,000/- and Rs.25,00,000/-. The assessing officer has also not accepted the plea of the assessee that the escaped



assessment was Rs.30,50,000/- only as the value of purchased property was Rs.79,50,000/-, in which the share of the petitioner is Rs.30,50,000/- only while observing that the petitioner has not furnished the bank statement. The contention of the assessee that the total escaped income is less than Rs.50 lac is not accepted by the assessing officer on the ground that the total escaped assessment of the income is Rs.1,84,45,194/- and the assessee has not filed income tax return for the assessment year 2016-17. It is also recorded by the assessing officer that before issuing notice under Section 148A(b) of the Act, prior approval of Principal Chief Commissioner of Income Tax, Rajasthan Jaipur was obtained.

18. We have gone through the reply of the assessee filed in response to the notice dated 28.02.2023 issued under Section 148A(b) of the Act. Along with the reply, the assessee has annexed copy of the registry of the property purchased in joint ownership of him, Anurag Lohiya and Swati Lohiya, bank statement of him from April, 2014 to April, 2015 and income tax returns of Anurag Lohiya and Swati Lohiya for the assessment year 2016-17. Full bank statement for the relevant years has also been furnished by the assessee.

19. We have noticed that in the notice under Section 148A (b) of the Act, the assessing officer has indicated that as per information available in its office, the petitioner has entered into following transactions during the year under consideration and the



details of the same have been provided in tabulation form. The petitioner, in his reply to the said notice, has simply denied that he has not entered any such transaction, however, the bank statements of the relevant years have not been furnished by the assessee.

20. From the order passed by the assessing officer under Section 148A(d) of the Act, it is clear that the details about the said transaction are available on tax payer annual summary report of the petitioner. It is not the case of the petitioner that the details of such transactions are not available on the tax payer annual summary report of him.

21. In such circumstances, the reasons assigned by the assessing officer in the order dated 05.04.2023 passed under Section 148A(d) of the Act cannot be brushed aside at the threshold. Moreover, the Hon'ble Supreme Court in **Raymond Woollen Mills Ltd. 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 as under:

"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



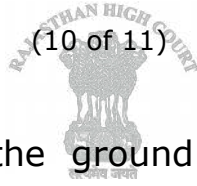
that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority."

(Emphasis supplied)

22. In **Anurag Gupta Vs. Income Tax Officer, Ward & Ors.** (supra), the Bombay High Court has set aside the order passed under Section 148A(d) of the Act as well as the notice issued under Section 148 of the Act on the ground that no material was supplied to the petitioner. However, in the present case, the assessee was given due opportunity of hearing while giving notice under Section 148A(b) of the Act and the reply filed by him is duly considered and thereafter detailed order under Section 148A(d) of the Act has been passed.

23. In **Krishna Diagnostic Pvt. Ltd. Vs. Income Tax Officer Ward 14** (supra), the Delhi High Court has set aside the order passed under Section 148A(d) of the Act on the ground that the assessing officer has ignored the relevant documents filed by the assessee along with his reply in response to the notice issued under Section 148A(b) of the Act. However, in the present case, the assessing officer has duly considered all documents filed by the petitioner along with his reply.

24. In **Balesh Jain Sons HUF Vs. Assistant Commissioner of Income Tax and Anr.** (supra), the Delhi High



Court has interfered on the ground that the assessee is not supposed to prove the negative, but here in the present case, such facts are not available, therefore, the said judgment is of no help to the petitioner.

25. So far as the contention of the petitioner that as per Clause (a) of sub-Section (1) of Section 149 of the Act, the time has expired for reassessment as the informative value happened to be less than Rs.50,00,000/- has not impressed us because as per the information available with the assessing officer, the total escaped income for consideration is Rs.1,84,45,194/- i.e. more than Rs.50,00,000/-.

26. So far as other contention of the petitioner that the notice dated 05.04.2023 under Section 148 of the Act is in violation of the Notification of Ministry of Finance dated 29.03.2023 is concerned, suffice it to say that prior to the issuance of the Notification of Ministry of Finance dated 29.03.2023, notice under Section 148A (b) of the Act had already been issued to the petitioner on 28.02.2023 and in such circumstances, the process of issuing notice under Section 148 of the Act had begun prior to the issuance of aforesaid notification of Ministry of Finance. Hence, it cannot be said that the notice under Section 148 of the Act has been issued in non-compliance of the same.

27. In such circumstances, we do not find it to be a fit case to interfere in the impugned order as well as the notice issued by the assessing officer.



28. Needless to say the petitioner will have the opportunity to represent before the assessing officer in response to the notice issued under Section 148 of the Act.

29. With the above observations, this writ petition fails and is hereby dismissed. There shall be no order to costs.

30. Stay petition also stands dismissed.

(YOGENDRA KUMAR PUROHIT),J

(VIJAY BISHNOI),J

masif/-D.R.