



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

D.B. Civil Writ Petition No. 447/2023

Laxmi Meena W/o Chaganlal Meena, Aged About 44 Years,
Hariyali Village, Tehsil Ahore, Jalore, Rajasthan (Pan No.
Alepm6133D).

----Petitioner

Versus

1. Union Of India, Through Joint Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.
2. Central Board Of Direct Taxes, Through Its Chairman, Department Of Revenue, Government Of India, Delhi.
3. The Principal Commissioner Of Income Tax-1, Jodhpur, Rajasthan.
4. The Income Tax Officer Ward-1, Jalore, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Yogesh Purohit

For Respondent(s) : Mr. K.K. Bissa with

Mr. G.S. Chouhan

HON'BLE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT

Order

15/02/2023

Heard.

This writ petition is directed against the order dated 28.07.2022 passed by the Income Tax Officer in exercise of powers under Section 148A(d) of the Income Tax Act and also simultaneously issuing notice under Section 148 of the Income Tax Act.



Learned counsel for the petitioner would argue that the institution of proceedings under Section 148 preceded by order dated 28.07.2022 passed under Section 148A(d) of the IT Act are wholly without jurisdiction and authority of law inasmuch as, the sale deed shows only 13 lakhs as the sale consideration and that was duly disclosed income. Therefore, it is contended that it is apparently not a case of any income having escaped assessment.

On the other hand, learned counsel for the Revenue would submit that the issue, which has been raised by the petitioner, is not pertaining to any jurisdiction but essentially a matter of determination at subsequent stages after issuance of notice under Section 148 of the IT Act.

At the outset, we find that the petitioner has not alleged procedural impropriety, irregularities or violation of statutory provisions in the matter of initiation of proceedings or passing of the order under Section 148A(d) of the Income Tax Act. Moreover, there is no allegation that his reply was not considered or opportunity of hearing was not afforded to him.

It appears that the department received information that the value of land, which was subject matter of transaction of sale, was far more than what has been disclosed. Therefore, on the face of it, it appears to be a case where the department has collected certain information regarding certain income having escaped assessment. Whether or not, the information is reliable, would be required to be examined at subsequent stages and at this stage, the writ court would not go into the



disputed questions of facts pertaining to valuation of the land or the nature of the land.

In the case of **Anshul Jain Vs. Principal Commissioner of Income Tax [CWP NO. 10219 OF 2022 DECIDED ON 02.06.2022]** the High Court of Punjab and Haryana held:-

"4. We have heard learned counsel for the parties and have carefully gone through the records of the case. The primary issue that would arise 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/reassessment in discharge of statutory duty casted upon him under Section 147 of the Act?"

4.1 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."

5. 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 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."



6. 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."

7. 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."

8. 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."

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 premature 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."*

The SLP preferred against the said order 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 reopening 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."*

In view of above settled legal position, in the factual premise of the case, which has led to passing of the impugned order under Section 148A(d), we are not inclined to interfere in



the matter but leave the petitioner to work out his remedy in the proceedings subsequent to issuance of notice under Section 148 of the Income Tax Act.

The petition is dismissed accordingly.

(YOGENDRA KUMAR PUROHIT),J (MANINDRA MOHAN SHRIVASTAVA), ACJ

6-Jayesh/-

