



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 7665/2023

Namrata Jain Daughter Of Shri Rajendra Kumar Jain, Resident Of Plot No 5, Bardiya Colony, Moti Doongri Road, Jaipur 302004 Currently Residing At 172, Knickerbocker Road, Closter, New Jersey, United States Of America Through Her Authorised Signatory Shri Rajendra Kumar Jain

----Petitioner

Versus

1. Income Tax Officer, Ward 5(2), Jaipur Having Its Address At New Central Revenue Building, Statue Circle, Bhagwan Dass Road, Jaipur
2. Deputy Commissioner Of Income Tax, Circle (International Circle), Jaipur Having Its Address At 413, 4Th Floor, Jeevan Nidhi-2, Lic Building, Ambedkar Circle, Jaipur

----Respondents

For Petitioner(s) : Mr. Siddharth Ranka with
Mr. Rohan Chatter

For Respondent(s) : Mr. Shantanu Sharma with
Mr. Aditya Doda &
Mr. Parth Vashishtha

**HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE MANEESH SHARMA**

Order

20/03/2025

AVNEESH JHINGAN, J:-

1. This petition is filed assailing order dated 14.04.2023 passed under Section 148A(d) of Income Tax Act, 1961 (for short 'the Act').
2. The brief facts are that the petitioner is a Non-Resident Indian (for short 'NRI') residing in USA for more than fifteen years. During assessment year 2016-2017, the petitioner



purchased in India an immovable property worth Rs.95,00,000/- . The department on the basis of an information received, issued notice dated 23.02.2023 under Section 148A(b). The reply to the notice was filed on 09.03.2023. Exercising power u/s 127 the proceedings were transferred to Assistant Commissioner (International Taxation) as the petitioner is an NRI. The impugned order was passed on 14.04.2023 and notice under Section 148 of the Act was issued.

3. Learned counsel for the petitioner submits that there was no information with the department with regard to income escaping tax in India. The contention is that the petitioner had given the details of two bank accounts in USA and NRE account of CITI Bank at Jaipur. It was shown that the money from USA was transferred through banking channel to India for purchasing the property. It is contended that in absence of income in India there was no requirement to file income-tax return.

4. Learned counsel for the respondent submits that the assessing office was not satisfied with regard to the source of earning in USA and the assessee failed to establish that the investment was of foreign income.

5. Section 147 empowers the assessing officer to assess or re-assess the escaped income chargeable to tax. It goes without saying that 'income chargeable to tax' means chargeable under the Act.

6. The flagging of the case of the petitioner as a high risk case in the inside portal according to the risk management strategy, itself cannot form basis to proceed under Section 147 of the Act.





The information of an NRI having purchased the property and not filed the return for the relevant years was the reason for issuance of notice under Section 148A(b) of the Act. A perusal of the reply and the documents annexed thereto shows that the two bank accounts details of the petitioner in USA along with the statement were annexed. These statements corresponded to the NRE account opened at Jaipur with CITI Bank wherefrom the purchase consideration was paid to the seller. Not only this, the petitioner had taken specific stand that since 2004-2005 she had not earned income in India and there was no requirement to file income-tax return. The USA Citizenship card, cancelled Indian Passport, Overseas citizen of India card, copy of sale deed dated 05.10.2015, the proof of deduction of TDS from sale consideration and the identification number of US were annexed with the reply. The documents produced by the petitioner were not doubted but reply was rejected stating that the account books relating to the income earned in USA were not produced.

7. The Supreme Court in the case of **Chhugamal Rajpal Vs. S.P. Chaliha and Ors.** reported in **(1971) 79 ITR 603 (SC)** held that the AO must have a prima-facie ground for taking action under Section 148 of the Act and a need for further enquiry cannot be equated for reason for issuing notice under Section 148.

8. Apart from the information of petitioner having purchased an immovable property in India during the relevant year, there is no information with the department to suggest that the income having been earned by petitioner in India or liable to be taxed under the Act had escaped assessment. No such averment is there either in the show cause notice or in the impugned order. It is



clear that preliminary inquiry can be held by AO prior to issuance of notice under Section 148A(b). Rather the AO while acting under the Act wanted to verify the source of income in USA. Once the source of investment was duly explained and it was established that it originated in foreign country there was no basis for the AO to proceed under Section 148.

9. The impugned order and the proceedings consequent thereto be quashed.

10. The writ petition is allowed.

(MANEESH SHARMA),J

(AVNEESH JHINGAN),J

Deepa/-64

Whether Reportable : Yes