

Court No. - 3

Case :- WRIT TAX No. - 125 of 2024

Petitioner :- Ved Prakash Agarwal , Huf Thru.
Karta , Old Galla Mandi ,

Respondent :- Chief Commissioner Of Income Tax
, Income Tax Office , Allahabad And Others

Counsel for Petitioner :- Pradeep Agrawal, Amar
Mani Tiwari

Counsel for Respondent :- Kushagra Dikshit

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Brij Raj Singh,J.

1. Heard learned counsel for the petitioner at length and Sri Neerav Chitravanshi, Advocate assisted by Sri Kushagra Dikshit, learned counsel for the respondents.

2. This writ petition has been filed with the following main prayers:-

"a) Issue a writ, order or direction in the nature of writ of certiorari to quash the order passed u/s 148A(d) dated- and the consequential notice u/s 148 dated 15.03.2024 issued by the Opp. Party No.2 for the A.Y. 2017-18 contained in Annexure No.9 and Annexure No.10 to the Writ Petition after summoning the records.

b) Issue a writ, order or direction in the nature of writ of certiorari quashing the consequential proceedings in pursuance of notice u/s 148 of the Act initiated by the Opp. Party No.2.

c) Issue a writ, order or direction in the nature of writ of mandamus directing the Opp. Parties not to proceed further in pursuance of notice u/s 148 of the Income Tax Act, 1961 during the pendency of this Writ Petition before this Hon'ble Court failing which the Writ Petition will become infructuous."

3. It is the case of the petitioner that he is 'Karta' of the Hindu undivided family and is engaged in the business of trading of Rab, Gud, Sugar & Khandsari in the name of M/s Ram Niwas Radhey Shyam. During the financial year 2016-17 relevant to assessment year 2017-18, the petitioner had filed a return for income of Rs. 27,35,890/- electronically on 08.12.2017. The petitioner's case was selected for scrutiny by Computer Added Scrutiny Selection (CASS) and a notice was issued under Section 143(2) of the Income Tax Act for the

assessment year 2017-18 on 24.09.2018.

4. Again, a notice was issued under Section 142(1) requiring certain documents from the petitioner. The column no.5 specifically required details regarding cash deposits made of specified bank notes during demonetization to the tune of rupees seventy five Lacs in bank account w.e.f. 07.11.2016 to 31.12.2016. The petitioner replied to such notice dated 10.05.2019 and explained that he had sold sugar in the open market, he had also filed receipts of persons who has bought such sugar by making payments in cash. It was clarified that rupees seventy five lacs which was deposited in the bank account by the petitioner related to sales make up to 08.11.2016.

5. On 03.06.2019, another notice was issued to the petitioner under Section 142(1) for assessment year 2017-18 requiring the petitioner to furnish details of purchases and sales made by him. The petitioner replied to such notice, the assessment was completed under Section 143(3) of the Act on 04.07.2019 by the Assessing Authority and nothing incriminating was found against the petitioner. While noticing that he has deposited rupees seventy five lacs in cash in various bank accounts during demonetization. The matter stood closed.

6. Now, all of a sudden on 17.02.2024, the petitioner has received a notice under Section 148A(b) for assessment year 2017-18 alleging that the deposit of rupees seventy five lacs in cash during demonetization amounted to a gross profit of 8.1%. The opposite party no.2, thereafter, passed an order under Section 148A(d) without application of mind on 13.03.2024 and consequently issued notice under Section 148 for assessment year 2017-18 on 15.03.2024.

7. It has also been argued by learned counsel for the petitioner that it is settled law that no notice under Section 147/148 can be issued for investigation of a transaction which have been presumed to be suspicious after final assessment order under Section 143 has been issued taking into account the same entry.

8. Learned counsel for the petitioner has placed reliance upon a Division Bench judgement of the Bombay High Court in the case of ***Mira Bhavin Mehta Vs. Income Tax Officer*** in Writ Petition No. 3246 of 2022 decided on 13.02.2024, a copy of which has been filed as annexure-12 to the petition and has also referred to annexure-13 to the petition where a copy of the order passed by the Supreme Court in the case of ***Assistant Commissioner of Income Tax and Others Vs. Marico Limited*** reported in ***(2020) 16 SCC 354*** has been annexed.

9. Learned counsel for the petitioner has read out the observations made by the Supreme Court in paragraph-3 of its order saying that it amounted to change of opinion which could not be done by the Assessing Officer.

10. Learned counsel for the respondents has pointed out that Section 148 has been amended w.e.f. 01.04.2022 and explanation-1 sub-clause-2 thereof has referred to audit objections. It has also been pointed out that the petitioner's case was taken up under Section 148 only because of audit objections, as is evident from the notice issued to him on 17.02.2024, a copy of which has been filed as annexure-02 to the writ petition. The counsel for the respondents has also pointed out page 109 and 110 of the paper book, which quotes the audit objections in the notice issued to the petitioner.

11. *Prima facie*, we find that there is no case for interim relief is made out.

12. The respondents may file their counter affidavits within four weeks'.

13. Two weeks' time, thereafter, is given to the petitioner to file rejoinder affidavit, if any.

14. List this case on 09.07.2024.

Order Date :- 14.5.2024
Darpan Sharma