

Court No. - 3

Case :- WRIT TAX No. - 127 of 2024

Petitioner :- Smt. Pushpa Saini

Respondent :- Union Of India Thru. Its Secy. Ministry Of Finance, Income Tax Deptt. New Delhi And 4 Others

Counsel for Petitioner :- Vijay Vikram Singh, Prabhat Kumar Pandey

Counsel for Respondent :- A.S.G.I., Kushagra Dikshit

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Brij Raj Singh, J.

Heard Sri Sameer alongwith Sri Vijay Vikram Singh, learned counsel appearing for the petitioner and learned counsel for the Revenue.

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

"1. To issue a writ, order or direction in the nature of certiorari quashing the impugned notice issued under clause (b) of section 148A of the Income Tax Act, 1961 dated 29th March, 2023 (Annexure No.1) and the connected proceedings for initiation of re-assessment of income for Assessment Year 2016-17.

2. To issue a writ, order or direction in the nature of certiorari quashing the impugned order passed under clause (d) of section 148A of the Income Tax Act, 1961 dated 12th April, 2023 (Annexure No.3) and the connected proceedings for initiation of re-assessment of income for Assessment Year 2016-17.

3. To issue a writ, order or direction in the nature of certiorari quashing the notice issued under section 148 of the Income Tax Act, 1961 (Annexure No.4) for the assessment year 2016-17 dated 12th April, 2023 and the connected proceedings which are in gross violation of law and principles of natural justice.

4. To issue a writ, order or direction in the nature of certiorari quashing the sanction extended in a mechanical manner by respondent No.2/Principal Chief Commissioner of Income Tax (Annexure No.7) for the assessment year 2016-17 dated 12th April, 2023 which is bad in law.

5. To issue a writ, order or direction in the nature of certiorari quashing the notice issued by respondent No.5/The Assessment Unit (NFAC), Income Tax Department, New Delhi (Annexure No.12) for the assessment year 2016-17 dated 02nd April, 2024 which is bad in law."

It is the case of the petitioner that the Jurisdictional Assessment Officer has no jurisdiction to issue notice under Sections 148 A (b) and 148 A (d) of the Income Tax Act for initiation of proceedings for reassessment in case of escaped income as there are circulars issued by the Central Board of Direct Tax which provide for faceless assessment/reassessment. Learned counsel for the petitioner has placed reliance upon the judgment of the Telangana High Court in the case of **Kankanala Ravindra Reddy Vs. Income Tax Officer** reported in (2023) 295 Taxman 652/156 taxmann.com 178 and in the case of **Pankajbhai Jaysukh Lal Shah Vs. Assistant Commissioner of Income Tax** reported in (2020) 312 CTR 300 by the Gujrat High Court and several other judgments of various High Courts including the Bombay High Court.

Learned counsel appearing on behalf of the Revenue has placed reliance before this Court an order passed by the Calcutta High Court in **Triton Overseas (P.) Ltd. Vs. Union of India** decided on 13.09.2023 reported in [2023] 156 taxmann.com 318 (Calcutta) where the Court has observed that ground regarding Jurisdictional Assessment Officer losing jurisdiction to reopen assessment only because of National Faceless Assessment Center issuing certain guidelines and circular for Faceless assessment, is a hypertechnical ground since mode of service does not affect the contents and merit of the notice and the issuance of such notice under Section 148 of the Act is justifiable and sustainable in law in view of the office memorandum dated 20th February, 2023 issued by the Central Board of Direct Tax.

It has been informed by the learned counsel for the Revenue that the order passed by the Telangana High Court has been challenged in SLP i.e Diary No. 2737 of 2024.

All the judgments said to have been referred by the learned counsel for the petitioner in ground 'J' of the writ petition have only persuasive value for this Court and cannot be considered binding precedents for this Court.

Prima facie, we are of the opinion that post introduction of Faceless Assessment Scheme 2020, the Jurisdictional Assessment Officer does not lose the jurisdiction to issue notice under Section 148A and its various sub clauses if he has reasons to believe and information to substantiate issuing of such notice.

This Court has gone through the reply submitted by learned counsel for the petitioner on 03.04.2023, a copy of which has been filed as Annexure no 2 to the writ petition which is being quoted herein below:-

" Respected Sir,

1. Your above notice is without authority of law.

2. Your above notice is without dominion.

3. No income has escaped assessment for the Assessment year under review and per-requisite of issue of this notice have not been fulfilled."

At this stage, it has been submitted by learned counsel for the petitioner that he has also submitted a reply running into more than 20 pages thereafter, a copy of such reply has been filed as Annexure no.5 to the writ petition.

Learned counsel for the Revenue has pointed that such reply, which has been filed as Annexure no.5 to the writ petition was filed after Section 148 A(d) order was issued and notice under Section 148 was given to the petitioner.

Let counter affidavit be filed by the respondents within a period of four weeks. Two weeks' time thereafter is given to learned counsel for the petitioner to file rejoinder affidavit.

List this case on **09.07.2024**.

Order Date :- 15.5.2024

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