**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

CWP No.2609 of 2022

Reserved on: 13.06.2023

Decided on: 22.6.2023

Ashok Kumar Sharma

....Petitioner

Versus

Pr. Commissioner of Income Tax and others

……Respondents

Coram

The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice
The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?

For the petitioner:	M/s Satyen Sethi and Jyotirmay Bhatt, Advocates.
For the respondents:	Mr. Vinay Kuthiala, Senior Advocate with M/s Vandana Kuthiala and Diwan Singh Negi, Advocates.

M.S. Ramachandra Rao, Chief Justice

In this writ petition, the petitioner has assailed the notice dt. 01.04.2022 (Annexure P-12) issued by the Income Tax Officer, Ward-1, Shimla (respondent no.3) under Section 148 of the Income Tax Act, 1961 (for short 'the Act'), for the assessment year 2015-16 and sought

directions to the respondents not to take any action in furtherance of the same.

Contentions of petitioner

2. Though the contentions on merits are also raised, the emphasis of the petitioner is on the ground that the said notice is wholly without jurisdiction inasmuch as prior to issuance of the same, the jurisdiction to assess the petitioner, under the Income Tax Act, 1961, was transferred by respondent no.1 through an order issued under Section 127(2) of the Act on 15.03.2022 from respondent no.3 to the Income Tax Officer, Ward 30(1), New Delhi (respondent no.4). It is contended that the transfer of jurisdiction was effective from 12.03.2022 and so the impugned notice dt. 01.04.2022 issued by respondent no.3 u/Sec.148 of the Act is without jurisdiction, as only respondent no.4 had jurisdiction to assess the petitioner to income tax.

Contentions of respondents

3. In the reply filed by the respondents, it is contended that Writ petition against a show cause notice should not ordinarily be entertained and the petitioner has an effective alternative remedy of filing of an appeal, in case he is aggrieved by the assessment order, which may ultimately be passed.

4. It is however admitted that jurisdiction of respondent no.3 was transferred, vide order dt. 15.03.2022 passed under Section 127(2) of the Act to respondent no.4, but the copy of the same was received in the office of respondent no.3 only on 30.03.2022 and till then the fact of transfer of jurisdiction was not known to him. It is alleged that if the assessee had any grievance, he should have availed the remedy, under Section 124(2) of the Act.

5. It is further contended that respondent no.3 had issued a show cause notice, under Section 148A(b) of the Act on 22.03.2022 itself, inviting objections of the assessee latest by 29.03.2022; that the assessee filed his response on the Portal on 29.03.2022; then respondent no.3 passed an order, under Section 148A(d) of the Act on 01.04.2022. It is contended that since respondent no.3 had issued notice on 22.03.2022 itself and the information as to transfer of jurisdiction under Section 127 of the Act came to his knowledge only on 30.03.2022, sometime thereafter and since he had issued notice under Section 148A (b) of the Act much earlier to his knowledge of transfer of jurisdiction, he had not committed any illegality in issuing the impugned notice.

6. It is also contended that PAN of the assessee was still not

transferred by the office of Principal Commissioner, Income Tax-I, Chandigarh to ITO, Ward No.30 (1) New Delhi (respondent No.4) and the Income Tax Business Application was still showing it under the jurisdiction of ITO Ward No.1, Shimla (respondent no.3); that notice can only be issued online by the Assessing Officer under whose jurisdiction the PAN lies, and therefore, the notice under Section 148 of the Act was rightly issued.

Rejoinder of petitioner

7. Rejoinder is filed thereto by the petitioner contending that the Supreme Court in ***Jeans Knit Pvt. Ltd. Versus Deputy Commissioner of Income Tax and others***[1] had categorically held that Writ petition would lie challenging notice under Section 148 of the Act and the plea raised as to existence of alternative remedy by the respondents, cannot be countenanced.

8. It is also contended that from the order under Section 127(2) of the Act made on 15.03.2022, it is clear that the proposal to transfer the case of the petitioner was moved by respondent no.2 and the genesis of proposal was that territorial jurisdiction of the case pertains to ITO Delhi; that the powers of the Assessing Officer can be exercised by

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1 2018(12) SCC 36= [2017] 390 ITR 10 (SC)

ITO Delhi with immediate effect and so the order of transfer of jurisdiction took effect from 12.03.2022, three days prior to the date of the said order; that respondent no.3 was directed to get the PAN as well as the relevant records transferred to the Assessing Officer, as per column-5 of the schedule, under intimation to the office of respondent no.2. It is contended that the PAN of the petitioner was to be transferred to ITO Delhi (respondent no.4) by respondent no.3,but inspite of the above directions, he did not do so; and respondent no.3 cannot take advantage of his own wrong and justify his action in issuing the impugned notice.

9. It is denied that that respondent no.3 had issued notice under Section 148 of the Act much earlier to his knowledge of transfer of jurisdiction, because the order under Section 127(2) of the Act was issued on 15.03.2022 and was received by respondent no.3 on 30.03.2022, but the notice under Section 148 of the Act was issued on 01.04.2022, two days later.

10. It is contended that the issuance of show cause notice under Section 148A(b) of the Act on 22.03.2022 has no relevance, because Section 148A of the Act, merely provides the procedure for conducting enquiry, providing opportunity and passing an order *prior*

to issuance of notice under Section 148 of the Act; and the petitioner in his reply dt. 29.03.2022 had brought to the knowledge of respondent no.3 that the jurisdiction to assess, had been transferred to respondent No.4 and that was also uploaded on the Portal of the Income Tax Department.

11. It is also pointed out that duty to transfer the PAN of the petitioner to ITO Delhi was that on respondent no.3 and not on respondent no.1, since as per law, such transfer responsibility is on the Destination Assessing Officer, i.e., the Officer to whom PAN is to be transferred and not the Source Assessing Officer in whose jurisdiction the PAN presently lies.

12. It is also stated that the transfer of PAN is electronically done on ITBA Portal, which was started by the Income Tax Department, as a part of Government's E-governance. It is, therefore, contended that respondent no.3 cannot justify issuance of notice, under Section 148 of the Act, to the petitioner.

13. It is contended that as per the amendment carried out to Section 149 of the Act by the Finance Act, 2021, no notice under Section 148 of the Act can be issued if three years from the end of assessment year has lapsed unless the case falls under Clause (b) of Section 149 of the

Act; but in terms of Section 149 (b) of the Act, limitation for issuance of notice under Section 148 of the Act for the assessment year 2015-16 was ten years for the income alleged to have escaped which is more than Rs.50.00 lacs i.e., it would expire only on 31.03.2026 and there is no reason for respondent no.3 to issue notice, under Section 148 of the Act.

Consideration by the Court

14. We have noted the contentions of the parties.

15. We shall first consider the question about the maintainability of the Writ Petition to challenge the impugned notice under Sec.148 of the Act.

16. Ordinarily a Writ Petition would not lie against the show cause notice for the reason that it would not give rise to any cause of action. The exception is that if such show cause notice is issued without jurisdiction a Writ under Article 226 of the Constitution of India, would lie (***Secretary, Ministry of Defence and others vs Prabhash Chandra Mirdha***[2] and ***Whirlpool Corporation Vs Registrar of Trade Marks Mumbai and others)***[3]**.**

17. The Supreme Court in ***Calcutta Discount Co. Ltd. Versus Income***

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2 (2012) 11 SCC 565

3 (1998) 8 SCC 1

Tax Officer, Companies District I, Calcutta and another[4] has held that the existence of alternative remedy is not always sufficient reason for refusing a party quick relief by a Writ or order prohibiting an authority acting without jurisdiction from continuing such action. The Supreme Court declared that the High Courts have power to issue a Writ in a fit case, prohibiting an executive authority from acting without jurisdiction as it would otherwise result in a person being subjected to lengthy proceedings and unnecessary harassment.

18. The respondents rely on the decision in ***Commissioner of Income Tax and others Versus Chhabil Dass Agarwal***[5] to contend that the Writ is not maintainable in view of the availability of alternative remedy.

19. But this decision was considered in ***Jeans Knit Pvt. Ltd. Versus Deputy Commissioner of Income Tax and others,*** *(1 supra).* In ***Jeans Knit Pvt. Ltd*** (1 supra) the Supreme Court held that challenge to notices under Sec.148 of the Act by way of a Writ Petition is maintainable and the decision in ***Chhabil Dass Agarwal (5 supra)*** would not apply. It held:

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4 (AIR 1961 SC 372)

5 (2014) 1 SCC 603

> ***"2.*** *We find that the High Courts in all these cases have dismissed[1], [2] the writ petitions preferred by the appellant/assessee herein challenging the issuance of notice under Section 148 of the Income Tax Act, 1961 and the reasons which were recorded by the Assessing Officer for reopening the assessment. These writ petitions are dismissed by the High Courts as not maintainable. The aforesaid view taken is contrary to the law laid down by this Court in* ***Calcutta Discount Co. Ltd. v. CIT(4 supra)****. We, thus, set aside the impugned judgments[4] and remit the cases to the respective High Courts to decide the writ petitions on merits.*
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> ***3.*** *We may make it clear that this Court has not made any observations on the merits of the cases i.e. the contentions which are raised by the appellant challenging the move of the Income Tax Authorities to reopen the assessment. Each case shall be examined on its own merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in various judgments.*
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> ***4.*** *We are conscious of the fact that the High Court has referred to the judgment of this Court in* ***CIT v. Chhabil Dass Agarwal(5 supra)****. We find that the principle laid down in the said case does not apply to these cases."* *(emphasis supplied)*

20. Coming to the facts of the instant case, admittedly, the order under Section 127(2) of the Act was passed by respondent no.1 transferring to respondent no.4 at New Delhi, the power to assess the petitioner, which was with respondent no.3 (ITO, Ward No.1, Shimla). It was clearly mentioned therein that the said order would come into effect immediately with effect from 12.03.2022.

21. Therefore, with effect from 12.03.2022, the jurisdiction of

respondent no.3 to make an assessment under Section 148 of the Act, qua the petitioner, got extinguished.

22. When respondent no.3 had issued notice under Clause (b) of Section 148A of the Act to the petitioner on 22.03.2022, the petitioner had brought this fact to the notice of respondent no.3 in his response on the Portal given on 28.03.2022. It was further stated that the order dt. 15.03.2022 issued under Section 127(2) of the Act that respondent no.1 was also available on the Income Tax Portal and a copy of the same was also attached to respondent no.3; and the specific plea was raised that notice dt. 22.03.2022 under Section 148 A (b) of the Act issued by respondent no.3 to the petitioner, was without jurisdiction.

23. Ignoring the same, the impugned notice under Section 148 of the Act was issued on 01.04.2022 by respondent no.3.

24. The fact that respondent no.3 had issued notice dt. 22.03.2022 under Section 148A(b) of the Act to the petitioner, would not be relevant because the said provision i.e., Section 148A of the Act deals with conduct of enquiry *before* issuance of notice under Section 148 of the Act, as rightly contended by the learned counsel for the petitioner. The respondents cannot place reliance on sub-section (4) of Section 127 of the Act and contend that the transfer of the case can

be made at any stage of the proceedings and the notice issued under Section 148 of the Act is not invalidated because in the instant case, the transfer of jurisdiction was done on 15.03.2022, much *prior* to the issuance of notice under Section 148A(d) and Section 148 of the Act on 01.04.2022. Had the transfer of jurisdiction happened *after* the issuance of notice of Sec.148 of the Act, the situation would have been otherwise.

25. Moreover, in the very order dt. 15.03.2022 passed under Section 127(2) of the Act it was mentioned specifically that respondent no.3 should get the PAN as well as relevant records transferred to respondent no.4. Without obeying the said directive of respondent no.1 and without transferring the PAN of petitioner and the relevant records to respondent no.4, respondent no.3 cannot take advantage of his own wrong and take the pretext that since the transfer of the PAN had not happened, he has the jurisdiction to issue the notice under Section 148 of the Act also.

26. In any event, no prejudice is caused to the respondents since the limitation for initiating action under Section 148 of the Act, in view of the amended Section 149 of the Act, is ten years, if the alleged income escaping assessment is more than Rs.50.00 lacs and since such period

for the assessment year 2015-16 would only end on 31.03.2026.

27. Accordingly, the Writ petition is allowed; the notice dt. 01.04.2022 (Annexure P-12) issued under Section 148 of the Act by respondent no.3 is quashed and respondent no.3 is prohibited from taking any action pursuant thereto. Liberty is, however, granted to respondent no.4 to take action against the petitioner in respect of alleged income escaping assessment for the assessment year 2015-16 in accordance with law; and if such proceeding is initiated, it is open to the petitioner to take all grounds available to him in law and contest the same.

28. It is made clear that this Court has not expressed any opinion on the claims of both parties.

29. Pending miscellaneous application(s), if any, shall stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Ajay Mohan Goel)
Judge

June 22, 2023
(Bhardwaj)