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RE-ASSESSMENT, AO TO DETERMINE WHETHER IT IS A 'FIT CASE'

"RAVINDRA PRATAP SHAHI V. UNION OF INDIA AND 2 OTHERS"

Hon'ble Allahabad High Court in case of *Ravindra Pratap Shahi v. Union Of India And 2 Others*¹, recently ruled that at stage of passing an order under Section 148A(d) of Income Tax Act, 1961, Assessing Authority only needs to determine whether it is a "fit case" for initiating reassessment proceedings. In the case, petitioner argued that there was no relevant material justifying the reassessment proceedings initiated against them, as the information was entirely from a third party. Hon'ble Court observed that following the amendments to Act by the Finance Act, 2021, Assessing Authority is only required to determine whether it is a "fit case" for initiating reassessment proceedings, without needing to conduct a detailed consideration of the correctness of the material available. Additionally, regarding the period of limitation under Section 148(1)(a) of the Act, 1961, Hon'ble Court held that petitioner's case fell under Section 149(1)(b), as the Assessment Year was 2017-18, and so whether the period is 6 years or 10 years (as alleged by the department) made no difference in this case.

Accordingly, it concluded that proceedings under Section 148A of the Income tax Act, 1961 are summary in nature and thus while passing any order under Section 148A(d), the Assessing Authority has to only see if it is a "fit case" for initiation of reassessment proceedings or not.

Hence, petition was dismissed.

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¹ WRIT TAX No. - 479 of 2024

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Court No. - 39

Case :- WRIT TAX No. - 479 of 2024

Petitioner :- Ravindra Pratap Shahi

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Abhinav Mehrotra, Satya Vrata Mehrotra

Counsel for Respondent :- A.S.G.I., Anant Kumar Tiwari, Gaurav Mahajan

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Shri Abhinav Mehrotra, learned counsel for the petitioner; Shri Gaurav Mahajan, learned counsel for the revenue and, Shri Anant Kumar Tiwari, learned counsel for Union of India.

2. Matter is at the fresh stage.

3. *Civil Misc. (Amendment) Application No. 3 of 2024* is allowed. Amendments are deemed to have been incorporated.

4. Challenge has been raised to the reassessment proceedings initiated against the petitioner under Section 147 read with Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). In that context, further challenge has been raised to the order dated 6.3.2024 passed by the Assessing Authority under Section 148A(d) of the Act.

5. Primarily, learned counsel for the petitioner has submitted, there is no relevant material as may give rise to the reassessment proceedings initiated against the petitioner. The entire material referred to and relied upon by the Assessing Authority came to the hands of the revenue authorities, in the course of the search proceedings against the third party namely - M/s Omaxe Limited.

Petitioner was not the person searched. Second, it has been submitted, the information obtained in the course of such search is extraneous. It does not indicate that any income has escaped assessment at the hands of the petitioner. Third, it has been submitted, integrity of the information furnished was doubtful, inasmuch as, on the own showing of the revenue authorities, the information confronted to the petitioner included data superimposed on the original data retrieved by the revenue authorities from M/s Omaxe Limited. Next it has been submitted, there is absolutely no basis to assume, even at this premature stage that the figures found recorded in the electronic account books of M/s Omaxe Limited had been backdated by ten years and/or had been divided by a factor of hundred. Further, it has been submitted, the information actually received by the revenue authorities was with respect to transactions not more than Rs. 10,00,000/-. By virtue of provisions of Section 149(1)(b) of the Act, no reassessment proceedings may arise against the petitioner for the A.Y. 2017-18, after 31.3.2021. Last, it has been submitted, wholly inadequate opportunity to reply to the notice issued under Section 148A(b) of the Act was granted inasmuch as the notice was of the date 26.2.2024. It was served on 27.2.2024 with the date for filing reply fixed on 4.3.2024. Thus, only six days' time was granted to the petitioner to furnish his reply as against the statutory minimum seven days required to be granted, by virtue of provisions under Section 148A(b) of the Act.

6. On the other hand, learned counsel for the revenue would submit, the correctness of the information received by the revenue is not justiciable. Insofar as the information received may remain relevant to the subjective opinion of the Assessing Authority as to the escapement of income at the hands of the petitioner, no further

or deeper scrutiny of the information is warranted at this stage. Second, it has been submitted, there is no doubt to the recovery of hard-drive/storage device from the person searched namely M/s Omaxe Limited. There is also no doubt as to the fact that information was retrieved from that drive indicating deposit of money made by the petitioner with the said M/s Omaxe Limited. Further, upon deep analysis made by the revenue authorities, *prima facie*, it appears that the figures recorded in the said electronic records had been divided by hundred so as to conceal the quantum of transaction and further the transactions themselves had been backdated by ten years (prior to 30.06.2018) only to cause confusion. In any case, matter would be examined thread bare during the assessment proceedings that are yet to commence. Third, it has been submitted, keeping in mind the above, escapement of income from the tax alleged exceeds Rs. 8 crores as the figure "853312" is to be multiplied by hundred to reach at the correct figure of deposit made by the petitioner, the period of limitation of ten years and not three years limitation would apply in terms of Section 149(1)(b) of the Act. As to the time granted to submit the reply, Shri Gaurav Mahajan, learned counsel for the revenue submits, the objection being raised by the petitioner is technical and not real. Though minimum time was granted to the petitioner, at the same time, it is on record that he had furnished two replies thereto on 3.3.2024 and 4.3.2024. Besides completely denying the transaction, no credible or other material has been brought to doubt either that the petitioner performed that transaction alleged or that he had made deposit Rs. 8,53,31,200/- in the year 2016 as alleged.

7. Having heard learned counsel for the parties and perused the record, in the first place, we may note, by virtue of amendments

made to the Act by Finance Act, 2021, it is no longer a requirement in law that the Assessing Authority may first record a "reason to believe" that any income had escaped assessment at the hands of the assessee before he may initiate reassessment proceedings against such an assessee for any assessment year. That restraint and statutory limitation placed to the power to reassess any assessee has been lifted.

8. Under the amended law, under Section 147 of the Act, the Assessing Officer may, subject to the provisions of Section 148 - 153 of the Act, reassess an assessee where income has escaped assessment for any assessment year. Under Section 148A (d) of the Act, the statutory requirement that now exists is - the Assessing Officer may, on the basis of material available to him, 'decide' whether it is a "fit case" to issue notice under Section 148 of the Act and thus reassess an assessee for income that may have escaped assessment.

9. Thus, at present, the Assessing Officer is not required to record any "reason to believe". He may only consider the material and the reply filed by the assessee to the notice issued under Section 148A(b) containing the proposal to reassess the petitioner and decide if it was a "fit case" to reassess an assessee for income that may have escaped assessment.

10. Thus, the legislature has consciously widened the scope of assumption of jurisdiction to reassess any assessee. In the minimum, the objective test that was required to be satisfied under the pre-existing law by recording appropriate "reason to believe" has been done away.

11. Seen in that light, we find, in the present case, the revenue has

asserted and at present, there is no reason to doubt that it has laid its hands on information of deposit made by the petitioner to M/s Omaxe Limited. On the face of it, the said deposit is claimed (by the petitioner) to be valued at Rs. 8,53,312/-. Also, on the face of it, the said deposit pertained to two properties described as NHGL/OD/SECOND/01 & NHGL/AUDI/FIRST/1&2.

12. There is no dispute that the above information has been found recorded in the electronic books of accounts of a third party - M/s Omaxe Limited. There is also no doubt that the said entries have been found recorded against the name of the petitioner as the depositor. Seen in that light, besides denying the transaction in entirety, it is not the case of the petitioner that he had paid Rs. 8,53,312/- only. At present, there is no evidence to lead us to that conclusion. At the same time, the petitioner has not denied (either before the Assessing Authority or this Court) his ownership or rights or interest in the two properties noted above.

13. On an analysis done by the revenue authorities, they have formed an opinion that the entries found recorded in the electronic books of accounts as M/s Omaxe Limited are coded. Both with respect to date and quantum, there are deliberate alterations made to hide the true identity of the transactions. Thus, the transactions are alleged to have been backdated by ten years and the amount divided by hundred and that result recorded in those books. Whether such information and allegation are correct/true, is not for the writ Court to pre-judge in the context of the amended law, at this stage. We are only required to consider if the "decision" of the Assessing Authority to reassess the petitioner would satisfy the test of it being a "fit case".

14. Insofar as the revenue authorities are not relying on the

extraneous material and insofar as the allegations made are not unfounded as may not allow for any enquiry to arise, we are not inclined to accept the objection being raised by the petitioner to test the integrity of the information received. Here it may be noted, at present, the information has arisen on the strength of data retrieved from a Hard-drive/storage device containing data downloaded from a remote server. *Prima facie*, the data has been verified by a human agent of M/s Omaxe Limited

15. In the facts noted above, there is nothing to doubt the *prima facie* relevancy of the information received by the revenue authorities for the purpose of initiating the reassessment proceedings. Here, we take note of the fact that the petitioner was not subjected to regular assessment under Section 143(3) of the Act for the A.Y. 2017-18. Thus, there is no earlier assessment where the facts being alleged against the petitioner or his income may have been examined.

16. As to the objection based on Section 148(1)(a) of the Act, we find no credible material to limit the period of limitation to reassess the petitioner to three years. In view of what has been noted, at present, without prejudice to the rights of the petitioners to raise such objections in the reassessment proceedings and leaving it open to the Assessing Authority to deal with the objection, if raised, on its own merits, *prima facie*, the quantum of escapement noted by revenue authorities exceeds Rs. 8 crores. Therefore, the period of limitation would be governed by Section 149(1)(b) of the Act. Thus, the limitation of reassessment proceedings for the A.Y. 2017-18 in the case of the petitioner would exist beyond 31.3.2021. Whether six years or ten years, the reassessment proceedings initiated against the petitioner vide

notice dated 6.3.2024, would remain within time.

17. Last, we may note, though Shri Mehrotra is right in his submissions that the time granted to the petitioner to file reply was short by one day as compared to the statutory minimum seven days required to be granted. The notice dated 26.2.2024 was first served on 27.2.2024, which recital is contained in the order dated 6.3.2024 itself. At the same time, it is not in dispute that the petitioner furnished his reply to that notice not once, but twice on 3.3.2024 and 4.3.2024. Besides the completeness of those replies even in the present petition, nothing has been shown to us as may indicate that the petitioner desired to furnish any further reply. Therefore, in view of the discussion noted above, we find substantial compliance of the law has been made in the facts of the case. Though the Assessing Authority may remain well advised to ensure that adequate time may be granted (in similar cases), from seven to thirty days as contemplated under Section 148A(1)(b) of the Act and such opportunity may be granted on a realistic scale of time and not to fulfill empty formalities in law, at the same time, here reasonable opportunity is seen to have been actually availed by the petitioner. Therefore, the writ Court may not remain over sensitive to the technical concern being voiced. Once opportunity has been actually and substantially availed on a realistic time scale, we are not inclined to set aside the order dated 6.3.2024 passed by the Assessing Authority passed under Section 148A(d) of the Act. Therefore, we are not inclined to interfere in the present petition in exercise of our extra-ordinary jurisdiction under Article 226 of the Constitution of India.

18. Therefore, the fact that the Assessing Authority has been drawn into the discussion to deal with the replies filed by the petitioner

may not alter the status of the proceedings as a summary proceedings as may only give rise to jurisdiction to reassess. At this stage, no detailed finding is either required or permissible in law. The Assessing Authority may have done well to pass a short order to briefly deal with the objections raised to disclose his decision - that it was a "fit case" to initiate reassessment proceedings.

19. Accordingly, present petition stands **dismissed**. However, we make it clear that in the reassessment proceedings, it will remain open to the petitioner to raise all objections with respect to relevancy and correctness of the information received by the revenue. Those objections when raised, may be tested on their own merits after making full compliance of rules of natural justice, without being prejudiced by any observation made in this order or the order dated 6.3.2024 passed under Section 148A(d) of the Act.

20. No order as to costs.

Order Date :- 9.4.2024
Prakhar

(Donadi Ramesh, J.) (S.D. Singh, J.)