2024 (I) ILR-CUT-896

Dr.S.K. PANIGRAHI, J. & G. SATAPATHY, J.

W.P(C) NO. 20219 OF 2022
ALONG WITH
W.P(C) NO.18149 OF 2021

BIJU JANATA DAL & ANR. .....Petitioners

-V-

THE CHIEF COMMISSIONER OF INCOME TAX, ORISSA REGION & ORS. ……Opp.Parties

INCOME TAX ACT - Section 148, 148A(b) – The Assessing Officer did not grant the petitioners any opportunity of hearing before issuing notice U/s. 148 – Effect of – Held, the court is inclined to quash the notices as the said order has been issued in violation of section 148A(b).

Case Laws Relied on and Referred to :-

1. SLP No.14823 of 2022 (SC) : Anshul Jain Vs. PCIT & Ors.
2. WPO No. 1119 of 2023 (Calcutta HC) : Arissan Energy Limited Vs. Union of India.
3. WPC No. 9191 of 2022 (Orissa HC) : Kailash Kedia & Ors. Vs. Income Tax Officers, Ward -1, Jharsuguda & Ors.
4. W.P(C) No. 7406 of 2022 (Delhi HC) : Divya Capital One Private Limited Vs. Assistant Commissioner of Income Tax
5. (1973) 3 SCC 168 : CIT Vs. K.S. Kannan Kunhi

For Petitioners : Mr. Ashok Kumar Parija, Sr. Adv., Mr. Ramesh Singh, Sr. Adv, Mr. S.Pr. Sarangi, Mr. D.K. Das, Mr. P.K. Das, Mr. A. Pattnaik, Mr. S.Swain, Mr. A. Das, Mr. Arnab Behera, Ms. Adyasa Kar

For Opp.Parties : Mr. R. Chimanka, Sr. ASC, Mr. A. Kedia, Jr. Standing Counsel for the Revenue & Mr. R.P. Kar, Sr. Adv.

JUDGMENT Date of Hearing : 29.11.2023 : Date of Judgment : 22.12.2023

Dr.S.K. PANIGRAHI, J.

1. Since common question of facts and law are involved in both the Writ Petitions, the same were heard together and are being disposed of by this common judgment. However, this Court felt it apposite to deal the W.P.(C) No.20219 of 2022 as the leading case for proper adjudication of both the cases.

2. By way of W.P.(C) No.20219 of 2022, the Petitioners challenge the notices dated 24.05.2022 and 25.07.2022 issued by the Opposite Party No.2 under Section 148A(b) and under Section 148A(d) of the Income Tax Act (hereinafter in short referred to as "the Act") respectively and also seek a direction from this Court for restraining the Opposite Parties from taking any further steps pursuant to the order dated 25.07.2022. The same Petitioners through W.P.(C) No.18149 of 2021 not only challenge the notice dated 06.05.2021 and 20.05.2021 issued by the Opposite Party No.2 but also challenge the notifications dated 31.03.2021 and 27.04.2021 issued by the Opposite Party No.4. The Petitioners also seek a direction from this Court for

restraining the Opposite Parties from taking any further steps pursuant to the notices dated 06.05.2021 and 20.05.2021.

I. FACTUAL MATRIX OF THE CASE:

3. On 16.12.1997, the Petitioner No. 1 was established as a recognized State Political Party being registered under Section 29A of the Representation of the People's Act bearing Registration No. 5625997JSIII. The Petitioner No. 1 has not only received a Permanent Account Number (PAN) but has also been regularly filing the Income Tax returns.

4. On 09.04.2013, the Petitioner No.1 received an amount of Rs.8,00,00,000/- (Rupees Eight Crores Only) as a voluntary contribution from the General Electoral Trust, i.e. the Opposite Party No. 3, having its Office at B-4, Aditya Birla Centre, SK Ahire Marg, Worli, Mumbai-400039. The amount was received by way of cheque bearing No. 104030, drawn on HDFC Bank Ltd, Aditya Birla Centre, S.K. Ahire Marg, Worli, Mumbai.

5. On 28.07.2014, the issue of receipt of Rs. 8,00,00,000/- (Rupees Eight Crore Only) as a voluntary contribution from the Opposite Party No. 3 was communicated to the Election Commission of India in the Contribution Report for amounts above Rs. 20,000/- for the FY 2013-14 (Assessment Year 2014-15), in Form 24A of the Conduct of Election Rules, 1961 read with Section 29C of the Representation of the People Act, 1951.

6. On 24.09.2014 the Petitioner filed its Income Tax Return under Section 139 of the Income Tax Act for the FY 2013-14 i.e. the Assessment Year 2014-15. The Petitioner therein indicated the gross income of Rs.15,58,10,226/-, which was claimed to have been raised by way of voluntary contributions. After deduction of Rs.14,03,82,876/- as voluntary contributions forming part of corpus as per section 11(1)(d), a sum of Rs.1,54,27,350/- was claimed as exempted under Section 13A of the Income Tax Act. The account of the Petitioner No.1 was audited and details of which were also provided under the Schedule LA to the Return filed.

7. On 31.03.2015 the Income Tax Department issued a notice under Section 148 of the Act to the General Electoral Trust/Opposite Party No. 3 seeking to re-open assessment for the assessment year 2008-09 on the ground that for Assessment Year 2008-09 the said Opposite Party No. 3 has neither filed its return of income nor obtained the PAN “Permanent Account Number”.

8. On 17.08.2015, the Petitioners supplied further information as sought for by the Office of the Additional Director of Income Tax (Inv.), pertaining to deposit of membership fees in the bank accounts of the Petitioner No. 1. At this juncture, it is claimed that the Additional Director of Income Tax (Inv.) did not find any irregularity in the books of accounts of the Petitioner No.1.

9. On 20.07.2016 the General Electoral Trust/Opposite Party No. 3 challenged the notice dated 31.03.2015 before the Bombay High Court through Writ Petition No. 1155 of 2016. The relevant portion of the order dated 20.07.2016 passed by the Bombay High Court is extracted herein below:-

"9. Prima facie we are of the view that the impugned notice is without jurisdiction. Accordingly, interim stay in terms of prayer clause (d)."

10. On 15.12.2017, further notices under Section 148 of the Act were issued to the Opposite Party No.3 for the Assessment Years 2009-10, 2010-11, 2012-13, 2013-14 and 2014-15. All of which have been stayed by the Bombay High Court by order dated 15.12.2017 in Writ Petition (L) No.3497 of 2017, which is stated to have been pending as yet.

11. Upon amendment of the provisions at Sections 147 to 149 by way of the Finance Act, 2021 on 01.04.2021 and after lapse of more than six years, the Opposite Party No.2 without complying with the necessary conditions as provided under Section 148A issued first notice dated 06.05.2021 under Section 148 of the Act, which is extracted herein below:-

"Shri Madam/Mrs.

Whereas I have reasons to believe that your income chargeable to Tax for the Assessment Year 2014-15 has escaped Assessment within the meaning of Section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/re-assess the income/loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year."

12. In reply to the first notice dated 06.05.2021, the Petitioners on 18.05.2021 again filed income tax return for the Assessment Year 2014-15. The Petitioners also requested therein for furnishing the reasons for reopening of assessment under Section 148. Pursuant to such request of the Petitioners, the Office of the Assistant Commissioner of Income Tax, Exemption Circle, BBN furnished its reasons for reopening the assessment for the Assessment Year 2014-15 in a second notice issued under Section 143(2) read with Section 147 of the Income Tax Act. The relevant portion of such second notice is extracted herein below:-

"Information was received through Insight Portal to verify the bogus receipt of Rs.8,00,00,000 received by Bjiu Janta Dal from one M/s. General Electoral Trust which claims to be an Electoral Trust but does not have any PAN and never filed regular Return of Income. The trust has also not applied for I3B certificate from the Income Tax Department. Therefore, the donation given by M/s. General Electoral Trust to any political party does not qualify to be called as donation. Hence, there is reason to believe that the income chargeable to tax has escaped assessment to the extent of Rs.8,00, 00,000/-."

13. The Petitioners on 21.05.2021 filed objections to the reasons mentioned in the notice dated 20.05.2021 for reopening of assessment inter alia stating therein that the reasons furnished by the Office of the Assistant Commissioner of Income Tax, Exemption Circle, BBN are arbitrary, illegal, unfair, unjust and suffer from complete non-application of mind.

14. Being aggrieved by the issuance of notice dated 06.05.2021 and order dated 20.05.2021 passed by the Opposite Party No.2, the Petitioners on 21.06.2021 preferred a writ petition being W.P. (C) No.18149 of 2021 before this Court. While entertaining such Writ Petition, this Court by interim order dated 19.07.2021

directed the Opposite Party Nos 2 and 3 not to take any coercive action against the Petitioners. After lapse of few days the Supreme Court by its judgment and order dated 04.05.2022 in the case of ***Union of India & Ors. v. Ashish Aggarwal*** vide Civil Appeal No.3005 of 2022 directed that all notices issued post Finance Act, 2021 under Section 148 of the Act be deemed to be notices under Section 148A(b) of the Act.

15. Pursuant to the aforesaid judgment of the Supreme Court, the Opposite Party No. 2 on 24.05.2022 issued a notice under Section 148A(b) of the Act for reassessment of the income for the Assessment Year 2014-15 to verify the alleged income of Rupees Eight Crores received by the Petitioner from the Opposite Party No. 3, since the Opposite Party No. 3/ Donor has neither possessed any PAN nor filed regular IT returns. Nor has the Petitioners applied for a certificate under Section 13A from the IT Department.

16. Hence, being aggrieved by the notice dated 24.05.2022 and the order dated 25.07.2022 issued under Section 148A(b) and under Section 148A(d) respectively by the Opposite Party No.2, the present Petitioners are constrained to file the Writ Petition vide W.P.(C) No.20219 of 2022.

II. PETITIONER'S SUBMISSIONS:

17. Learned counsel for the Petitioner(s) has made the following submissions in support of his contentions:

18. The necessary pre-condition for reassessment of income under Section 147 as amended by the Finance Act, 2021, i.e., that income has escaped assessment, has not been established by the Opposite Parties Nos.1 and 2. The initiation of reassessment proceedings vide notices under Sections 148 and 148A is based on information which does not have a rational connection or a relevant bearing to the suggestion "that the income chargeable to tax has escaped assessment in the case of the assessee".

19. The first notice dated 06.05.2021 issued under Section 148 as amended by the Finance Act, 2021 is otherwise barred by limitation under the first proviso to amended Section 149, having been issued beyond six years from the end of the Assessment Year 2014-15.

20. Section 13A of the IT Act provides the benefit of deduction of income in respect of political parties (recipient). The Petitioner, a recognized State Political Party, registered under Section 29A of the Representation of the People's Act received a cheque for Rs.8 Crores only from the Opposite Party No. 3, i.e., General Electoral Trust. The Petitioner has complied with all the requirements of Section 13A and is, thus, eligible for the benefit under the said provision.

21. In the circumstances, the Petitioners are entitled to deduction of Rs.8 Crore only, received from the Opposite Party No.3 as "voluntary contributions received by a political party from any person" under Section 13A of the IT Act.

22. It is the admitted case that there has been no infraction of Section 13A of the IT Act. Therefore, the donation of Rs.8 Crore received by the Petitioner cannot be

said to have escaped assessment so as to clothe the Assessing Officer with jurisdiction to initiate the present proceedings.

23. The first proviso to Section 148, as amended by the Finance Act, 2021, mandates that there must be information which suggests that income chargeable to tax has escaped assessment. Moreover, such information must be in respect of the Assessee, i.e., the Petitioner.

24. Notably, all these alleged violations are in respect of the donor i.e., the Opposite Party No. 3 and not the Petitioner. The aforesaid information does not allege any violation of the provisions of Section 13A of the IT Act. Section 13A and 13B of the IT Act which provide the benefit of deduction of income in respect of political parties (recipient) and electoral trusts (donor) are mutually exclusive. In other words, non-compliance with the requirements of Section 13B by the Donor cannot prejudice the claims of the Recipient under Section 13A as long as the recipient has complied with all the requirements of Section 13A.

25. The information relied upon may be relevant to initiate reassessment proceedings against the donor for violation of Section 13B but the same cannot be considered relevant for the purposes of Section 13A. In fact, such proceedings were initiated against the Opposite Party No. 3 vide notice dated 27.03.2017. The notice has been stayed by the High Court of Bombay and is pending adjudication in Writ Petition (L) No. 3497 of 2017.

26. In the alternative, even if the electoral trust does not satisfy the requirements of being an electoral trust under Section 13B, the Petitioner is entitled to claim the donation received from General Electoral Trust as a voluntary contribution received by a political party from "any person", having satisfied the requirements of Section 13A. Admittedly, the contribution was received by way of a cheque and the identity of the donor is not in dispute.

27. Therefore, the information relied upon by the Opposite Party Nos.1 and 2 is irrelevant/extraneous and has no bearing with the deduction rightfully claimed by the Petitioner. The information is completely unrelated to the Petitioner. The information has no rational connection or relevant bearing on the suggestion "that the income chargeable to tax has escaped assessment in the case of the assessee."

28. Moreover, the reassessment proceedings are clearly barred by limitation in terms of the first proviso to the amended Section 149 of the Act and the initial notices issued on 06.05.2021 and 20.05.2021 were clearly beyond the time stipulated under the provisions of Section 149(1) as it stood immediately before the commencement of the Finance Act, 2021. Hence, as per the said earlier provision, the outer limit of period of limitation was 6 years from the end of the relevant Assessment Year 2014-15, i.e., 6 years from 31.03.2015, which indisputably expired on 31.03.2021.

29. The information mentioned in the impugned order had already been possessed by the Opposite Party No.2 at the time when the Petitioners filed original return for the Assessment Year 2014-15. The information indicated in the impugned

notice under no circumstances can be a suggestive fact that the transaction of giving and receiving the voluntary contribution between the Petitioner and the Opposite Party No. 3 was not a real one. The said information also does not even remotely suggest/ justify that the amount of Rs.8,000,00,00/-(rupees eight crores), which was credited in the books of the Petitioner, under any circumstances can be treated as a receipt in the nature of income.

30. The impugned notice does not directly or indirectly allege violation of any provision/ requirement/ obligations by the Petitioners in terms of Section 13A of the Act in relation to the receipt of the aforesaid amount of donation.

III. SUBMISSIONS ON BEHALF OF OPPOSITE PARTY 1 & 2:

31. Learned counsel for the Opposite Parties has made the following submissions in support of his contentions:

32. The Supreme Court in ***Anshul Jain v. PCIT and others***[1] has held that "what is challenged before the High Court was the re-opening notice under Section 148A(d) of the Income Tax Act 1961. The notices have been issued, after considering the objections raised by petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing officer in the re-assessment proceedings."

33. The High Court of Calcutta has also held in ***Arissan Energy Limited v. Union of India***[2] that "Sufficiency of the reasons and findings in the order under Section 148A(d) of the Act cannot be re- appreciated and scrutinized by this Court in exercise of Constitutional Writ Jurisdiction under Article 226 of the Constitution of India". Therefore, the writ application is not maintainable either in fact or in law. Hence, the same is liable to be dismissed."

34. The High Court of Orissa in case of ***Kailash Kedia and Others v. Income Tax Officers, Ward -1, Jharsuguda & others***[3] did not entertain the writ application

1. SLP No.14823 of 2022 (SC) **2**. WPO No. 1119 of 2023 (Calcutta HC)
3. WPC No. 9191 of 2022 (Orissa HC)

filed, challenging the order u/s 148 A(d) of the Income Tax Act and held in para-11 that needless to state here that when such challenge is raised, all such grounds will have to dealt with in accordance with law by the authority which is expected to pass an appropriate order w/s 147 read with 148 of the Income Tax Act.

35. Further after 01.04.2021 the Income Tax Act was amended by introducing new provision of reassessment i.e. 148A of the Income Tax Act, in this proceeding the petitioner has also an opportunity to explain the facts in response to the notice u/s 148 will be issued. Hence the challenge made to the order u/s 148A(d) of the Income Tax is pre-matured. As such the writ petition is liable to be quashed on the ground of maintainability under Article 226 and 227 of the Constitution of India.

36. In the present case the notice issued in the reassessment proceeding under the IT Act is neither to be a case of lack of jurisdiction nor is there any allegation of violation of principle of natural justice. Further, the petitioner has ample opportunity

to agitate the grievance before the assessing authority. Therefore, in view of the judgments and plain reading of section 148A of the IT Act, present writ application is not permissible in the eye of law.

37. The revenue has intimated the reasons with regard to initiation of proceeding and the details has already been explained in the counter affidavit on the merit of the issuance of the notice/order. Therefore, in the written note, the present Opp. Party restricted only on the issue of maintainability of the writ petition.

IV. COURT'S REASONING AND ANALYSIS:

38. It is pertinent to make it clear that the Opposite Party No. 3 had challenged the notice dated 31.03.2015 before the Bombay High Court in Writ Petition No. 1155 of 2016. The Bombay High Court, on 20.07.2016, held that prima facie, the notice was without jurisdiction, and directed stay of operation of the notice dated 31.03.2015. Further, notices under Section 148 of the IT Act were issued to the Opposite Party No. 3 for the Assessment Years 2009-10, 2010-11, 2012-13, 2013-14, and 2014-15, all of which have been stayed by the Hon'ble Bombay High Court as may been seen in order dated 15.12.2017 in Writ Petition (L) No. 3497 of 2017, and are pending adjudication.

39. The impugned notice does not, directly or indirectly, allege the violation of any provision/ requirement/ obligations cast upon the Petitioner in terms of Section 13A of the IT Act (i.e., the provision applicable for receipts by registered political parties) in relation to the receipt of the said amount of donation.

40. Similar issues have been dealt by the Delhi High Court in ***Divya Capital One Private Limited v. Assistant Commissioner of Income Tax***[4] wherein it is held as follows:

> **4**. W.P(C) No. 7406 of 2022 (Delhi HC)
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> *"7. This Court is of the view that the new re-assessment scheme (vide amended Sections 147 to 151 of the Act) was introduced by the Finance Act, 2021 with the intent of reducing litigation and to promote ease of doing business. In fact, the legislature brought in safeguards in the amended re-assessment scheme in accordance with the judgment of the Supreme Court in GKN Driveshafts (India) Ltd. ITO, MANU/SC/1053/2002: (2003) 259 ITR 19 (SC) before any exercise of jurisdiction to initiate re-assessment proceedings under Section 148 of the Act.*
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> *8. This Court is further of the view that under the amended provisions, the term "information" in Explanation 1 to Section 148 cannot be lightly resorted to so as to re-open assessment. This information cannot be a ground to give unbridled powers to the Revenue. Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act. Merely because the Revenue- respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of re-assessment under Section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under Section 148 post an order under Section 148A(d)."*

41. Additionally, the present reassessment proceedings are clearly time barred in terms of the first proviso to the amended Section 149 of the Income Tax Act, in as much as, the initial notices which were issued on 06.05.2021 and 20.05.2021 under Section 148 were clearly beyond the time limit specified under the provisions of Section 149(1) as it stood immediately before the commencement of the Finance Act, 2021. This is because as per the said earlier provision, the outer limit of period of limitation provided was 6 years from the end of the relevant Assessment Year 2014-15, i.e., 6 years from 31.03.2015, which indisputably expired on 31.03.2021.

42. In the context of non-consideration of the explanation of the Assessee by the Assessing Officer, the Supreme Court in the case of ***CIT v. K.S. Kannan Kunhi***[5] , has held as follows:

> *"5. Before going into the questions formulated by Mr B. Sen, it is necessary to examine whether the justice of the case requires our interference with the judgment of the High Court in exercise of discretionary jurisdiction under Article 136 of the Constitution. It may be noted that the assessee had explained that Rupees 46,563 invested for the purposes of toddy business in Kerala was partly made up from the income from the immovable property possessed by the assessee and partly from the remittances made by Kannan Kunhi from Ceylon. The ITO did not examine the merits of those explanations. He rejected them by merely observing that they were not satisfactory. The explanations offered by the assessee are not prima facie absurd. They were capable of being examined by the ITO. It was possible for the ITO to go into the extent of the immovable property owned by the H.U.F. and its income. He did not care to do so. It was also possible for the ITO to go into the question of remittances made by Kannan Kunhi from Ceylon. Here again the ITO did not choose to do so. It was not even suggested by the ITO that the assessee was having any business activity in India prior to August 17, 1950, or any other source of income taxable under the Act. If the explanation given by the assessee that part of the initial business capital was supplied by Kannan Kunhi is*
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> **5**. (1973) 3 SCC 168
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> *correct then the same is a good explanation. That explanation has not been examined at all. Similarly the assessee's explanation that he was having income from the agricultural property has not been examined. The Appellate Assistant Commissioner also did not choose to examine the explanation given nor did the Tribunal care to go into that explanation. It just brushed aside that explanation with the observation: "that the assessee had no proper or satisfactory explanation for the source of these amounts". In our opinion the departmental authorities as well as the Tribunal had arbitrarily rejected the explanation given by the assessee. Under these circumstances we do not think that we will be justified in going into the niceties of the law whether the High Court was justified in going into the merits of the findings reached by the Tribunal. All that we need say is that this is not a fit and proper case where we should exercise our discretionary jurisdiction."*

43. Section 148A(b) lays down that the Assessing Officer shall, before issuing any notice under Section 148, "provide an opportunity of being heard to the assessee. In the present case, the Assessing Officer did not grant the Petitioners any opportunity of being heard. The Petitioners were allowed to submit their written objections only on 06.06.2022 through the e-proceeding facility of the Department. In the circumstances, the impugned order has been issued in violation of Section 148A(b).

44. With respect to the aforesaid discussion, this Court is inclined to quash the notices dated 24.05.2022 and 25.07.2022 issued by the Opposite Party No.2 under Section 148A(b) and under Section 148A(d) of the Income Tax Act. Additionally, the notice dated 06.05.2021 and 20.05.2021 issued by the Opposite Party No.2 are also quashed.

45. Accordingly, both the Writ Petitions are disposed of.

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