

Court No. - 3

Case :- WRIT TAX No. - 216 of 2024

Petitioner :- Yogendra Singh

Respondent :- Union Of India Thru. Secy. Revenue Ministry Finance Govt. New Delhi And 2 Others

Counsel for Petitioner :- Manish Misra, Dileep Pandey, Gaurav Upadhyay

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

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Brij Raj Singh, J.

Heard Sri Manish Misra, learned counsel for the petitioner, Sri Ravi Kant, learned counsel for opposite party no.1/Union of India and Sri Neerav Chtravanshi and Sri Kushargra Dikshit, learned counsel for opposite parties no.2 and 3.

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

"(1) to, issue a writ order or direction in the nature of certiorari to quash the impugned order dated 23.4.2024 passed U/s 148A(d) of the Income Tax Act, 1961 for the assessment year 2020-21. (Annexure No. 1).

(ii) to, issue a writ order or direction in the nature of certiorari to quash the impugned consequential notice U/s 148 dated 23.04.2024 for A.Y. 2020-21 for re-assessment of the case of petitioner U/s 147 of the Income Tax Act. (Annexure No.2).

(iii) to, issue a writ order or direction in the nature of certiorari to quash the impugned approval order given U/s 151 of the Income Tax Act by the opposite party number 2 dated 23.4.2024 for A.Y. 2020-21. (Annexure No.3).

(iv) to, issue a writ order or direction in the nature of certiorari to quash the impugned notice issued U/s 148A(b) of the Income Tax Act dated 30.3.2024. (Annexure No.4).

(v) to, issue a writ order or direction in the nature of Mandamus commanding the opposite parties to not to harass and compel the petitioner to submit further reply in pursuance of the notice U/s 148 of the Income Tax Act, 1961 for the AY 2020- 21.

It is the case of the petitioner that he is the scrap dealer and sole proprietor of the firm in the name and style of M/s Awadh Steels which was established in the year 2013 as registered trading firm and GSTIN was also given for the purpose of its business of sale and purchase of iron scrap. The profit margin between the sale and purchase of scrap is the actual income of the petitioner. For Assessment Year 2020-21, the petitioner filed Income Tax Return under Section 139(1) of the Income Tax Act (hereinafter referred to as "Act") on a total income of Rs.5,06,240/- which was accepted. However, for the same Assessment Year 2020-21, a notice under Section 148A(b) of the Act was issued by the Jurisdictional Assessing Officer (hereinafter referred to as 'JAO').

On the basis of some reports submitted with regard to M/s Singh Iron and Metals, a company situated in Kanpur, which was duly registered with GSTIN number in August, 2019, but failed to submit regular return for six months under the Act. Its registration was suo-motu cancelled on 20.12.2020 while going through the papers of such company which was according to the respondents is fraudulent firm. The said firm made 9 sale transactions with the petitioner. A Notice was issued to the petitioner, alleging that department was, prima facie, of the opinion that the petitioner was involved in bogus purchase of Rs. 66,37,468/- from M/s Singh Iron and Metals for the Assessment Year 2020-21. The petitioner's firm gave a

detailed reply and also asked for further opportunity to produce evidence in case a JAO was not satisfied with the reply.

The tax invoices as well as e-way bills were submitted showing the total cost of purchase including portion of Central GST and State GST @ 9% each. The petitioner's tax invoices showed the GSTIN of the seller and only thereafter the e-way bills were generated for such nine purchases made with effect from 17.10.2019 to 28.09.2020. All transactions were made through bank account and no cash transactions were undertaken. The petitioner's reply was not considered at all and the order under Section 148 A(d) of the Act was issued with the approval of Principal Commissioner Income Tax. The order of approval under Section 151 of the Act has been filed as Annexure No.2 to the writ petition, which shows that as against Column No.15, no reply was submitted by the petitioner/assessee under Section 148 A(b) of the Act and in Column No. 22, it mentions that draft order under Section 148 A(d) of the Act of the JAO had been perused by the Principal Commissioner of Income Tax. The Principal Commissioner of Income Tax gave an approval without application of mind because had the draft order been read, it would have shown that reply of the assessee was scanned and mentioned from internal page 3 on-wards upto internal page -5. Although, the said reply was scanned and made a part of the order under Section 148A(d) of the Act in the columns meant for mentioning whether reply was submitted by the assessee it was mentioned that the assessee had not submitted any reply.

This Court is of the considered opinion that clearly there is

non-application of mind while giving approval under Section 151 of the Act.

Learned counsel for the petitioner has raised other grounds as well for challenging the order under Section 148 A(d) and under Section 148 of the Act based on the scheme notified by the Central Government under Section 151A of the Act and also on the basis of Judgments rendered by various High Courts relating to the fact that if sale of the same material which has been bought, is not questioned by the department, then the purchase cannot be said to be fake as GSTR 1 is generated on sale which automatically is shown as GSTR-2 as against the purchasers.

Sri Neerav Chtravanshi, learned counsel for the opposite parties no. 2 and 3 has stated that order dated 148 A(d) of the Income Tax is only re-opening assessment and proper opportunity shall be given to the assessee during the re-assessment proceedings to place its case. In support of his submission, he has placed reliance of the judgment of Hon'ble Supreme Court in the case of **Raymond Woolen Mills Limited Vs. Income Tax Officer** reported in 2008(14) SCC 218. He has also submitted that not only reply of the assessee was quoted in the order passed under Section 148 A(d) of the Income Tax Act but it was also considered by JAO and compared with the information given by the revenue authorities concerned.

We are aware the judgment given by learned counsel for opposite parties no. 2 and 3. However, we are also of the opinion that the said judgment does not say that JAO shall issue notice under Section 148 A(b) and order under Section 148 A(d) of the Act without application of

mind and without jurisdiction and that the Principal Commissioner, Income Tax, Lucknow shall issue approval order under Section 151 of the Act also without application of mind against the assessee.

Accordingly, the order under Section 148 A(d) and notice issued under Section 148 of the Income Tax Act both are quashed and the matter is remitted back to opposite parties no.2 and 3 to pass appropriate orders after considering the reply of the assessee which has been quoted way back in the order impugned but has not been considered at all.

The writ petition stands **allowed**.

(Brij Raj Singh, J.) (Sangeeta Chandra, J.)

Order Date :- 3.9.2024

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