* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 21.02.2025
Judgment delivered on: 27.02.2025

\+ W.P.(C) 2043/2025 & CM APPL. 9611-12/2025

MONISH GAJAPATI RAJU PUSAPATI ...Petitioner

versus

ASSESSMENT UNIT INCOME TAX DEPARTMENT & ANR. ...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Piyush Kaushik, Advocate.

For the Respondents : Mr. Abhishek Maratha, SSC with Mr. Apoorv Agarwal (JSC), Mr. Parth Samwal (JSC), Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha and Ms. Muskaan Goel, Advocates for the Revenue.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. The Petitioner has filed the present petition, *inter alia,* impugning a notice dated 23.03.2024 (hereafter referred as *"impugned notice"*) issued under section 148 of Income Tax Act, 1961 (hereafter referred as *"the Act"*) for Assessment Year (AY) 2020-21 as well as an order dated 03.02.2025 (hereafter referred as *"impugned order"*) whereby the respondents/revenue had disposed of the objections dated 13.09.2024 filed

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by the petitioner with respect to the assumption of jurisdiction under section 148 of the Act for AY 2020-21.

2. Mr. Piyush Kaushik, learned counsel for the petitioner stated that the said notice was issued pursuant to the information collected under section 135A of the Act, which pertains to the transactions entered by some other assessee (Manisha Jain) having a different PAN and having no relation with the petitioner.

3. The learned counsel for the petitioner urged that the impugned notice was issued in an absolutely misconceived manner, vitiating the procedure laid down under section 148 of the Act. He laid emphasis on the objections dated 13.09.2024 filed by the petitioner *vide* which, he had sought for the reasons for reopening assessment and objecting to the remarks mentioned in the annexure to the impugned notice. He stated that even though the respondents did not counter or point out anything incorrect towards the objections of the petitioner, the said objection of the petitioner was disposed of by the impugned order. The extract of the said order is set out below:

> *"The reply of the assessee has been perused and it is seen that in the case of the assessee information was received under the scheme notified under section 135A of the Income Tax Act. Therefore, the case of the assessee is covered within the clause (iv) of Explanation 1 of section 148. Hence, provisions of section 148A of the Act are not applicable in the case of assessee as per the clause (d) to the Proviso of the section 148A of the I.T. Act, 1961.*
>
> *The contention of the assessee that no show cause notice or opportunity was provided to assessee, in this regard it is to submit that as per e-Verification 2024 instruction no. 2 of 2024 issued vide F.No. CIT(e-Verification)/2023-24/FVR/Instr./dated 01.03.2024, certain High Risk cases have been identified for re-opening under section 147 of the Act and these case were made available to the Assessing Officer*

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under clause (iv) of Explanation 1 to section 148. Further, the Assessing Officer was not required to issue Notice under section 148A of the Act in these cases keeping in view the clause (d) to the Proviso of the Section 148A of the Act. The Assessing Officer may proceed to get the approval of the Specified Authority for issuing notice u/s148 in such cases as per 1st proviso to Sec 148 of the Income-tax Act 1961.

In your case, approval under section 151 of the I.T. Act, 1961 has been taken as per provision of section 151 of the I.T. Act, 1961, thereafter notice under section 148 of the I.T. Act, 1961 was issued on 23.03.2024.

In view of the above discussions, it is held that there is no merit in the objections raised by the assessee. The objections are therefore rejected as discussed in above paras and the objections raised against issuing notice u/s.148 of the I.T. Act, 1961 are disposed of accordingly. The reopening of assessment by way of notice issue u/s 148 is considered lawfully valid and justified. Further, it may also be noted that the reopening of assessment is not the final outcome of the re-assessment proceedings. It is just the initiation of the proceedings and as regards to the establishment of the escapement income or otherwise will be based on the facts and submissions made during the course of the proceedings for which the reasonable opportunity would be provided to present the case. Therefore, the assessee is requested to furnish the complete details as per notice u/s.142(1) of the I.T. Act, 1961 and cooperate in the assessment proceedings."

4. In support of his submissions, he relied on the decision of the Bombay High Court in the case of ***Benaifer Vispi Patel vs. Income Tax Officer, (2024) 165 taxmann.com 5 (Bom)***.

5. Per contra, Mr. Abhishek Maratha, learned Senior Standing Counsel submitted that the respondents had initiated proceedings against the petitioner based on the information collected by virtue of the procedure prescribed under the scheme notified under section 135A of the Act. It is further submitted by the learned Senior Standing Counsel that the exception under Explanation 1(iv) to section 148 permits the Assessing Officer (AO) to bypass the procedure prescribed under the provisions of section 148A of

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the Act, in cases where the authority is in possession of information gathered under the scheme of section 135A of the Act. In such cases, AO can directly issue a notice under section 148 of the Act and need not follow the procedure prescribed in section 148A. Therefore, under the above provision, providing documents to the assessee is not a mandatory requirement under section 135A of the Act.

6. He further submitted that the information collected by the respondents under section 135A of the Act was pertaining to the petitioner only, however, while supplying the material/Information to the petitioner, the respondents herein had made an innocuous and inadvertent mistake. In that, alongwith the impugned notice under section 148 of the Act, the respondent had annexed information pertaining to some other assessee. Therefore, the grievances of the petitioner are baseless as the respondents herein had not violated any provision by not providing or inadvertently providing the wrong information to the petitioner along with notice u/s 148 of the Act. He stated that this information can be provided, to which the petitioner can file his reply and contest.

7. It is further submitted that the judgement passed by the Bombay High Court i.e. ***Benaifer Vispi Patel*** *(supra)*, relied upon by the petitioner herein, is not applicable in the present matter being distinguishable on facts.

8. He further relied upon the judgments passed by this Court in W.P.(C) 17577/2022 titled ***"Charu Chains and Jewels Private Limited vs. ACIT"*** decided on 22.12.2022 and W.P.(C) 15387/2022 titled ***"The Boeing Company vs. UOI & Ors."*** decided on 17.11.2022, wherein this Court had set aside the notice impugned therein issued under section 148 of the Act

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and granted a fresh opportunity to respondents to provide information/material which formed the basis for triggering the assessment or reassessment.

9. Having heard learned counsel for the parties, we are partly persuaded by the submission of the petitioner and find the contentions urged on behalf of the respondents unpersuasive.

10. In a matter of this nature, it would be relevant to note the dates on which various procedures were undertaken by the respondents before we examine the applicability of various judgements which have been relied upon by both parties.

11. At the first instance, it would be pertinent to note that the Insight Portal of the respondents pertaining to the petitioner for the Financial Year (FY) 2019-20 (relevant Assessment Year being "AY 2020-21") reflected the following information:

> *"On perusal of the reply of the assessee as well as his ITR & 26AS it has been observed that: (i) SFT-012(R) - 1,00,00,000:- Duly declared in ITR. (ii) SFT-004 - 22,44,647:- The assessee has submitted that on the cash deposit is in the nature of income and has already been offered to tax by the assessee. However, on perusal of the ITR of the assessee, it has been observed that the assessee has not declared any such income in the ITR. The assessee has filed ITR-2 declaring gross total income of Rs. 81,24,740/-. Since, the assessee could not discharge the onus to justify the reported cash deposit of Rs. 22,44,647/- and failed to submit any valid justification or satisfactory documentary evidences regarding this. Hence, the reported cash deposit of Rs. 22,44,647/- stands unverified, and further verification is required on this issue reported for e-Verification."*

The aforesaid information was e-verified as per the e-Verification Instruction No.2 of 2024 dated 01.03.2024 by virtue whereof certain High Risk cases were identified for re-opening. Ostensibly, the respondents

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appear to have considered the case of the petitioner under the said Instruction.

12. Consequent to the information available with the respondents on Insight Portal, the AO sought approval from the Specified Authority under section 151 of the Act on reaching the *prima facie* satisfaction that the information is suggestive of the income escaping assessment to tax. This was in accordance with the scheme notified under section 135A read with Explanation 1(iv) of section 148 of the Act. The said approval by the Specified Authority was granted on 22.03.2024. We find that the Specified Authority had granted its approval under section 151(i) of the Act, in respect of the petitioner, for the AY 2020-21 noting that Rs.22,44,647/- as the quantum of income which has escaped assessment after considering the information provided in Annexure. This quantum is clearly reflected in the Insight Portal too. The relevant documents pertaining to the above were handed over by learned counsel for the respondents during the course of hearing on 17.02.2025. The same are taken on record.

13. Following the aforesaid approval, the respondents *vide* the impugned notice dated 23.03.2024 issued under section 148 of the Act called upon the petitioner as to why the re-assessment proceedings in respect of AY 2020-21 be not initiated. Alongwith the said impugned notice, the respondents annexed information, based whereon the respondent, *prima facie,* was satisfied that the said information is suggestive of the income escaping assessment to tax. It is apparent that the information annexed to the impugned notice pertains to some other assessee and not the petitioner. It is this aspect which the learned counsel for the petitioner has emphasised to

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urge that the notice under section 148 as well as the order dated 03.02.2025 impugned herein ought to be quashed and set aside.

14. From the above facts noted, it is manifest that the Insight Portal revealed information pertaining to the petitioner in respect of the FY 2019-20 corresponding to the AY 2020-21. It is reflected in the remarks column that the cash deposit to the extent of Rs.22,44,647/- is unverified on account of the assessee having failed to submit any valid justification or satisfactory documentary evidences for the same, requiring further verification. Accordingly the case was reported for e-Verification. A perusal of the approval accorded by the Specified Authority on 22.03.2024 and the Annexure attached thereto containing the information also reveals that the same pertains to the petitioner for AY 2020-21 and the quantum of income escaping assessment to tax, also is Rs.22,44,647/-. Thus, the information available on the Insight Portal; the consideration of the same by the AO; and the information made available to the Specified Authority for approval under section 151 of the Act is one and the same.

15. It appears that while issuing the impugned notice under section 148 of the Act, the respondents by pure inadvertence have annexed/attached the information pertaining to some other individual/assessee and not the petitioner. The said aspect appears to be an error or mistake and neither deliberate nor wilful. On account of such error/mistake or inadvertence, no fatality can be said to attach to the issuance of the impugned notice under section 148 of the Act. However, at the same time, the passing of the impugned order dated 03.02.2025 is absolutely unsustainable in overlooking the error apparent on the face of the record. It can be safely

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presumed that the authority did not apply its mind to the objections raised by the petitioner.

16. In this regard, we have also examined the provisions of section 292B of the Act. For convenience section 292B is extracted hereunder:

> *"**292B. Return of income, etc., not to be invalid on certain grounds.** No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceedings if such return of income, assessment, notice, summons or other proceedings is in substance and effect in conformity with or according to the intent and purpose of this Act."*

It is pertinent to note that the said section is couched in a negative language and saves any invalidity to the return of income, assessment, notice, summons or other proceeding, merely by reason of any mistake, defect or omission, if any of the above is, in substance and effect, in conformity with or according to the intent and purpose of this Act. We are of the opinion that this provision would enure to the benefit of the respondents only to the extent of excluding the error of furnishing information relating to some other individual annexed to the impugned notice under section 148 of the Act while saving the notice itself. This however, shall not save the impugned order dated 03.02.2025.

17. Ergo, while we have no hesitation in quashing the impugned order dated 03.02.2025, we are of the considered opinion that the impugned notice dated 23.03.2024 issued under section 148 of the Act, to the extent that it reflects information of some other person, shall be rectified by the

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respondents. The appropriate and correct information available on the Insight Portal as also the Approval accorded by the Specified Authority alongwith the relevant information shall be made available to the petitioner within a week from date to enable him to file his reply/objections which may be considered strictly in accordance with law.

18. The aforesaid directions are in accord with the ratio laid down in ***Benaifer Vispi Patel****(supra)* except to the departure from completely quashing the impugned notice under section 148 of the Act, having regard to the aforenoted distinction on facts coupled with provisions of section 292B of the Act. The judgements relied upon by the respondents are not applicable to the facts of this case inasmuch as the ratio in both the judgements are rendered in cases involving the procedure prescribed under section 148A of the Act. The present case is one initiated under the scheme of section 135A of the Act and the consequential proceedings which are faceless thus, those judgements are inapplicable.

19. Resultantly, the present writ petition is partly allowed in above terms directing the respondents to complete the procedures with expedition, albeit, in accordance with law. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J

DEVENDER KUMAR UPADHYAY, J

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