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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.38 OF 2025

Sanjay Ratra
B-101, Swati Apartments,
Yari Road, Versova, Andheri (W),
Mumbai-400061

.. Petitioner

Versus

1. Assistant Commissioner of
Income Tax Circle, Mumbai
Room No.302, 3rd floor,
Kautilya Bhavan, C-41 to C-43,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-400051
2. Principal Commissioner of
Income Tax-17, Mumbai
Kautilya Bhavan, C-41 to C-43,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-400051
3. Principal Chief Commissioner of
Income Tax, Mumbai
Aayakar Bhawan, Maharshi Karve Road,
Churchgate, New Marine Lines,
Mumbai-400020.
4. Assistant Commissioner of
Income Tax Circle-35(3), Mumbai
Kautilya Bhavan, C-41 to C-43,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-400051
5. Union of India
through the Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
North-Block, New Delhi-110001
6. The Central Board of Direct Taxes,
Department of Revenue,

Ministry of Finance,
Government of India,
North-Block, New Delhi-110001

.. Respondents

Ms. Rutuja N Pawar a/w Ms. Hetal Laghave for the petitioner.
Mr. Akhileshwar Sharma for respondents.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 6 January 2025

PRONOUNCED ON : 7 January 2025

JUDGMENT (Per Jitendra Jain J):-

1. This petition under Article 226 of the Constitution of India seeks to challenge the notice under Section 148 of the Income Tax Act 1961 (the said Act) dated 17 April 2023 for the assessment year 2016-17 consequent to the notice issued under Section 148A (b) of the said Act dated 24 March 2023.
2. The petitioner is an individual. For the assessment year 2016-17, the petitioner has filed his original return of income on 8 April 2017 *interalia*, disclosing capital gain amounting to Rs.66,59,598/-. The said return was revised on 13 April 2017, but the capital gain disclosed remained intact.
3. The aforesaid return of income was selected for a scrutiny assessment by the respondents vide notice under Section 142(1) dated 26 October 2018 of the said Act. In the annexure to the said notice, the

petitioner was called upon to furnish the copy of bank statement, copy of form No.26-AS, re-conciliation of the receipts with return of income, documentary evidence for claim of deduction under Chapter VI-A, etc.

4. On 30 November 2018, an assessment order under Section 143 (3) was passed by the respondents, who accepted the return of income. The assessment order records that the scrutiny was limited to only verifying deductions under Chapter VI-A.

5. On 24 March 2023, a notice under Section 148-A(b) of the Act for the assessment year 2016-17 came to be issued by the respondents. In the annexure to the said notice, it was stated that the respondents had received the information in accordance with the Risk Management Strategy Formulated by the Central Board of Direct Taxes (CBDT) and as per the said information, it was alleged that the petitioner had received cash of Rs.1.30 crore which is undisclosed and further the credit card transaction amounting to Rs.19,09,144/- was also required to be verified. In the annexure, it is further stated that neither of these transactions had been accounted for, and therefore, the income charged to tax has escaped assessment. It further states that since the amount involved is more than Rs.50 Lakhs, larger period under Section 149(1) (b) is invoked. The annexure further states that since the return of income has not been filed, income chargeable of tax has escaped assessment for AY 2016-17, and therefore the petitioner was required to

show cause as to why the notice under Section 148 should not be issued on the basis of the above information.

6. The petitioner filed a letter dated 8 April 2023 objecting to the above show cause notice and made submissions. Concerning the credit card transaction, the petitioner enclosed the bank statement and submitted that the credit card expenses pertain to the general and travel expenses of the petitioner and his family. Similarly, concerning the alleged cash receipt of Rs.1.30 crores, the petitioner made his submission on the merits as to why the same cannot be added as income in his hands. The petitioner also enclosed the sale deed valuation report, etc., supporting his objections. No jurisdictional issue was raised in the objections.

7. On 17 April 2023, the respondents passed an order under Section 148 A(d) rejecting the petitioner's objection. Along with the order of rejection, the petitioner was also served with a copy of approval under Section 151 of the Act. The order of rejection was followed by a notice under Section 148 of the Act, which is impugned in the present proceeding.

8. Ms Pawar, learned counsel for the petitioner, submits that the respondents in the information provided proceeded on any erroneous assumption that the petitioner had not filed his return of income,

whereas, in fact, the petitioner has filed his return of income and which fact has not been denied in the order rejecting the objection. Therefore, the very basis of re-opening the case falls to ground. Secondly, Ms. Pawar relying on Clause (iv) of Explanation 2 to Section 148 and the second proviso to Section 148 as it exists before Finance (No.2) Act of 2024 submitted that respondents ought to have issued notice under Section 153C of the Act and not under Section 148 of the Act, since in the present case the search in the case of a party to whom the land was sold took place on 6 June 2018 which was prior to 1 April 2021 and therefore provisions of Section 148 as amended would not be applicable. We may note that after the matter was closed for orders, in the afternoon session, Ms. Pawar mentioned and stated that she forgot to argue one more point, which is the ground relating to the issue being covered by the decision of this Court in *'Hexaware Technologies Ltd. Vs Assistant Commissioner of Income Tax & Ors.'*¹.

9. Ms. Pawar, further submitted that the issues were examined during the course of the assessment proceedings since the bank statement was furnished in the course of the regular assessment proceedings. In view thereof, Ms. Pawar submitted that the impugned proceedings are without jurisdiction and ought to be quashed. She relied upon the decision of Delhi High Court in the case of *'Shri.*

¹ (2024) 464 ITR 430

*Trilochanlal Goyal Vs Assistant Commissioner of Income Tax & ors.*² and the decision of the co-ordinate bench of this Court in the case of *'Narendra Kumar Shah Vs. Assistant Commissioner of Income Tax & ors.*³ in support of her submissions.

10. Mr. Sharma learned counsel for the respondent vehemently objected to the prayers made by the petitioner. Mr. Sharma submitted that the information regarding the alleged cash transaction was received after the assessment order was passed. He further submitted that credit card expenses and alleged cash transactions were not examined during the course of assessment proceedings since the assessment proceedings were limited to verification of deduction under Chapter VI-A, and it was a limited scrutiny. Mr Sharma further submitted that the reliance placed on Clause (iv) of Explanation 2 and the second proviso to Section 148 cannot be read in a reverse manner to mean that the impugned proceedings are without jurisdiction. Mr Sharma submitted that on a correct reading of the scheme of Section 148, the only conclusion that can be drawn is that in case of a person in whose case a search is conducted or any other person connected with such search person, the procedure prescribed under Section 148A need not be followed and the officer can issue a notice under Section 148 directly. Mr. Sharma further submitted that there is nothing on record to

² Writ Petition No.13342 of 2018

³ (2024) 465 ITR 385

show that the issues for which re-opening is sought were examined during the course of assessment proceedings, and in any case it would involve an investigation into questions of facts, and therefore the present petition should be dismissed. He further submitted that none of the issues raised now were raised in the objections.

11. We have heard learned counsel for the petitioner and respondents and have perused the documents brought to our notice.

12. At the outset, on a perusal of the objections raised vide letter dated 8 April 2023 by the Petitioner, we could not find any of the arguments raised today before us having been raised in the said objections. The objections are purely on the merits of the case. Therefore, on this count itself, we do not wish to interfere in our writ jurisdiction to permit the Petitioner to raise the grounds which have not been raised in the objections.

13. However, we permit the petitioner to raise this issue if permitted in law in the course of the assessment and appellate proceedings if and when such occasion arises. In any case, even if we had to consider their submissions, which are raised before us today, we, for the reasons mentioned hereinafter, *prima facie*, do find any case having been made out for interference.

14. The first submission of Ms. Pawar that these issues were examined and, therefore, the proceedings are without jurisdiction is required to be rejected. The issue of alleged cash receipt was not examined during the course of the regular assessment proceedings since the information from Faridabad Officer was received after the conclusion of the assessment proceedings. The assessment proceedings were concluded on 30 November 2018 whereas the information of alleged cash receipt was received on 21 February 2022. Furthermore, from the questionnaire issued to examine issues in the regular assessment proceedings there is no query on credit card expenses or alleged cash receipt. Therefore, both issues do not appear to have been examined. The assessment order further records that the assessment was limited scrutiny assessment only for verification of deduction under Chapter VI. The Petitioner has not enclosed the submissions made during assessment proceedings in the present petition, and therefore, we cannot give any conclusive findings in the writ proceedings. Therefore, on these counts, the submissions made by Ms Pawar *prima facie* are required to be rejected.

15. The second submission made by Ms Pawar that in the annexure to notice under Section 148A(b), it is stated that the return is not filed is incorrect since the return was, in fact filed and the same has not been disputed in the order rejecting the objections. In our view, the

reopening has to be done based on “information” and the said information has been reproduced in the annexure to the notice under Section 148A(b). It is based on the said information that the present proceedings are initiated. Although the respondents in the said annexure to the notice have stated that the return has not been filed, but in our *prima facie* view, that is not the basis on which the reopening is sought. The reopening is based on the information in accordance with the Risk Management Strategy Formulated by the CBDT. The respondents in their replies have stated that the statement in the information annexed to the notice that the petitioner has not filed return of income is a typographical error. In our view, without going into the same, *prima facie* since the reopening is based on the information, this submission made by Ms Pawar is rejected and can better be examined in appellate proceedings.

16. Reliance placed by Ms. Pawar on the decision of Delhi High Court in the case of ***Shri Trilochanlal Goyal (supra)*** is not applicable since Delhi High Court was concerned with pre-amended Section 148 and the pre-amended law did not use the phrase “information”. Insofar as, the decision of ***Narendra Kumar Shah (supra)*** is concerned the same, is distinguishable on facts since that was not the case where information of alleged unaccounted cash receipt was received. Therefore, the decision relied upon by Ms. Pawar *prima facie* is distinguishable on facts

and not applicable.

17. Ms. Pawar submitted since the search in the case of Faridabad party was prior to 1 April 2021 and, therefore, provisions of Section 153C would be applicable and not Section 148A is *prima facie* required to be rejected since in the present case the information is not only qua the alleged cash receipt on account of search but also about credit card expenses and credit card transactions. Therefore, even on this count, we cannot accept *prima facie*, the submissions made by the Petitioner.

18. Ms Pawar, after the hearing, mentioned the matter in the post-lunch session and submitted that the issue is covered by the decision of this Court in the case of *Hexaware Technologies Ltd. (supra)*. We have perused the grounds raised in the petition and do not find any grounds having been raised on this issue except in para dealing with delay in explaining in approaching this Court. No foundational facts are stated in this regard in the petition. Therefore, this ground also cannot be considered. However, the petitioner is at liberty to raise this ground before the appellate authority if and when any occasion arises.

19. Now we come to the submission of Ms. Pawar concerning approval under Section 151 of the said Act. Ms. Pawar submitted that the approval is without application of mind. We have perused the approval memo, which was annexed to the petition and we do not find

prima facie that the approval is without application of mind. In the remarks column in Item 21 and 22 it is stated after going through the annexure, the authority has given its approval by referring to the material available on record and consideration of the same. This is not a case where in the approval column, the approving authority has only stated 'yes', but the approval records the perusal of the draft order submitted by the assessing officer, material available on record, consideration of the same and the information as per Risk Management Strategy. Therefore, *prima facie* we are not impressed with the submission of the petitioner on this count.

20. In view of the above and the facts of the present petition, we do not see any reason to interfere in the impugned proceedings to quash the notices challenged in the present petition. However, the petitioner is at liberty to raise the same in normal reassessment / appellate proceedings if and when the occasion arises. We have only expressed a *prima facie* view to decide whether to exercise our jurisdiction under Article 226 of the Constitution of India without considering the merits of the matter because such merits need to be examined by the assessing officer in the first instance.

21. Accordingly, this Petition is dismissed with no order as to costs.

(Jitendra Jain, J.)

(M. S. Sonak, J.)