

(2023) 02 BOM CK 0080
In the Bombay High Court
Case No : Writ Petition No.15580 Of 2022

Chitra Supekar

APPELLANT

Vs

Income Tax Officer] Ward And Others

RESPONDENT

Date of Decision : 15-02-2023

Acts Referred:

Income Tax Act, 1961 — Section 139, 147, 148, 148A(b), 148A(d), 148(d), 149(1)(a), 151(i), 151(ii)

Citation : (2023) 02 BOM CK 0080

Hon'ble Judges : Dhiraj Singh Thakur, J;Kamal Khata, J

Bench : Division Bench

Advocate : Dinesh Ramesh Gulabai, Ajeet Manwani

Final Decision : Dismissed

Judgement

Kamal R. Khata, J

1. The present petition challenges the notice dated 20th March 2022 issued u/s 148A(b) of the Act Income Tax Act, 1961 for the AY Assessment Year 2018-19 wherein the case was flagged in accordance with the risk management strategy by the Central Board of Direct Taxes ("CBDT") for non-filing of returns and on having information that the income chargeable to tax has escaped assessment; it also challenges the impugned order dated 5th April 2022 issued under Section 148A(d) of the Act principally on the ground that the same requires a separate approval from the PCCIT since it was passed after expiry of three years from the end of the relevant AY 2018-19 i.e. by 31st March 2022 and the notice dated 13 April 2022 u/s. 148 of Act seeking to reopen the petitioner's assessment for AY 2018-19

Facts:

2. The petitioner is a housewife, was assessable as an individual under the Act and since she had income below taxable income limits for A.Y. 2018-19 she did not file her return of income as per provisions of section 139 of the Act. She held

joint bank accounts with her husband through which investments were made and income therefrom were considered in her husband's income tax returns. On 13th April 2022, the petitioner was issued a reopening notice u/s.148 of the IT Act and a response thereto was submitted on 29 April 2022 disclosing a total income of Rs.5,000/- for A.Y. 2018-19 alongwith the return of income of the same date.

3. Mr. Gulabani, learned counsel for the petitioner submitted that since the petitioner had changed her address, the notice dated 20th March 2022 was not received by the petitioner as evinced by postal acknowledgments at Exhibit 'E' at pages 35 and 35A of the petition. He submitted that the petitioner's changed address was updated on 10th January 2021 with the respondents evinced by the Income tax return (ITR) acknowledgment filed being Exhibit "A colly" to the rejoinder at page 116 and 117 of the petition. Consequently, the petitioner had no opportunity to file a response to the said notice and was deprived of a hearing as contemplated u/s.148A(b), and the order dated 5th April 2022 was passed ex parte under Section 148A(d). He submitted that since the notice was not validly served, the proceedings are void and in support thereof relied upon the judgments in the case of CIT vs Eshaan Holding (P) Ltd 344 ITR 541 (Delhi High Court) and CIT vs Avtar Singh 304 ITR 333 (Punjab & Haryana High Court) . His challenge to the order dated 5th April 2022 was on the ground of sanction i.e. since it was passed after expiry of three years the approval of the PCCIT would have to be taken as contemplated by section 151(ii) r.w.s 148(d) of the IT Act and the previous sanction taken from PCIT would not suffice.

4. With regard to the impugned notice under 148 dated 13th April 2022 he submitted that it was hand delivered to the petitioner on 21st April 2022 when she visited the respondent's office pursuant to a message received on her registered mobile number (registered with the PAN) on 18th April 2022 and therefore not duly served. He submitted that the respondents ought to have effected delivery through registered email. He submitted that since the reopening notice issued u/s. 148 of the Act dated 13 April 2022 is beyond 31st March 2022 i.e. three years from the end of the relevant A.Y. 2018-19 as prescribed u/s. 149(1)(a) of the Act, the sanction of the PCCIT as per Section 151(ii) of the Act ought to have been taken for issuance of such notice.

5. The learned counsel urged that the AO has failed to show that he possessed such information which suggested that income chargeable to tax has escaped assessment and that the information was one which was flagged in accordance with the risk management strategy formulated by the CBDT or that any final objection was raised by the Comptroller and Audit General of India to the effect that the assessment has not been made in accordance with the provisions of the Act. He further submitted that since more than 3 years lapsed from the relevant A.Y. 2018-19, the AO could issue a notice u/s. 148 only if he had in his possession, books of account or other documents or evidence which would reveal the income chargeable to tax had escaped assessment. He submitted that the impugned notice was issued based on suggested information. He further

submitted that no enquiry was recorded nor was a hearing granted to the petitioner and thereby the entire process was in excess of jurisdiction, illegal, arbitrary, perverse and in violation of principles of natural justice and consequently the petition deserved to be made absolute.

6. Mr. Manwani, learned counsel on behalf of the respondents contended that the notice u/s. 148A(b) is dated 20 March 2022 and was sent to the petitioner via speed post. He submitted that since the notice was within three years i.e. before 31st March 2022, from the end of the relevant A.Y. 2018-19, the respondents had rightly taken the sanction from the PCIT in accordance with Section 151(i) of the IT Act. He submitted that since there was no reply furnished by the petitioner, the order could be passed on or before 30 April 2022. Consequently, the order passed u/s. 148A(d) on 5 April 2022 was passed in accordance with law. He submitted that in the present case, there was information available on the portal of the risk management strategy formulated by the CBDT under category of non-filing of returns (NMS) that the assessee had entered into financial transactions to the tune of Rs.1,55,09,548/- during A.Y. 2018-19. He further submitted that the petitioner had not filed her ITR before A.Y. 2020-21 and her first I.T.R. for A.Y. 2020-21 was filed on 10 January 2021 mentioning return income of Rs.2,69,230/- paying NIL tax. Since there was concrete information related to the transactions of the petitioner to the tune of Rs.1,55,09,548/- such income had escaped assessment. He consequently submitted that the petition deserves to be dismissed.

Conclusion:

7. We have heard both counsels at length and have perused the proceedings. we agree with the view taken by the Delhi High Court in the case of CIT vs Eshaan Holding (P) Ltd. 344 ITR 541 upholding the view of the ITAT that if there is no valid service of notice under section 148, the reassessment proceedings are null and void as also the decision of the Punjab and Haryana High Court in the case of CIT vs Avtar Singh [2008] 304 ITR 333 which held that service of notice under section 148 is a condition precedent for making reassessment or re-computation under section 147 of the Act.

8. In our view, before issuing the notice under section 148A (b) it was imperative for the AO to have checked if there was a change of address. A condition precedent for any proceeding including a proceeding u/s. 148A, is a valid service of notice, lest it would be a jurisdictional error. With regard to, the first notice dated 20th March 2022, it is the case of the petitioner that they had not received any notice dated 20th March 2022 and the revenue contended that it was served through speed post at the last known address. It is evident that though the respondents had the new address of the petitioner as evinced from the ITR filed on 10th January 2021, the respondents chose to send the notice to their old address. We also find no averment or proof of the service of notice dated 20th March 2022 on the petitioner in respondent's affidavit in reply dated 14th November 2022. The cascading effect of non-service was the petitioner did not

get an opportunity to respond to the notice. Consequently, the notice dated 20th March 2022 and the proceedings thereafter are void. Apropos section 151(ii) of the Act the sanction from the PCCIT ought to have been taken when order was sought to be passed beyond the period of three years i.e. beyond 31st March 2022 on 5th April 2022. Consequently, the notice dated 20th March 2022 and order dated 5th April 2022 deserves to be set aside on account of jurisdictional error i.e. for want of service and consequently, for non-compliance with the provisions of the Act.

9. With regard to the reopening notice u/s. 148 dated 13th April 2022, the contention of the petitioner that they received the hand delivery of the notice on 21st April 2022 pursuant to the message received by the petitioner on the registered mobile number on 18th April 2022 is also not controverted by the respondents in their reply. No approval from PCCIT was taken as contemplated u/s 151(ii) as the reopening was caused beyond three years and is therefore vitiated. We also find no averments responding to the ITRV dated 29 April 2022 filed for A.Y. 2018-19 by the petitioner in response to the notice u/s. 148 dated 13 April 2022 nor with regard to the compliance of the stipulations by the respondents u/s. 148 of the IT Act.

10. We are accordingly of the view that the impugned order dated 5 April 2022 and the notice dated 13 April 2022 also deserves to be quashed and set aside. The respondent will be at liberty to proceed with the assessment after issuance of notice and providing the Petitioner a hearing after a response is filed. Such exercise shall be completed preferably within a period of twelve weeks from the date of receipt of this order. It is made clear that we have not examined the merits of the matter.

11. Rule made absolute. No order as to costs.