
(2025) 04 RAJ CK 0626

In the Rajasthan High Court, Jaipur Bench

Case No : Civil Writ Petition No.21086 Of 2019, Connected with Civil Writ
Petition No. 20943 Of 2019

M/S Samay Irrigation Private Limited

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 17-04-2025

Acts Referred:

Income Tax Act, 1961 — Section 147, 148A(d), 148A(b), 148, 151

Citation : (2025) 04 RAJ CK 0626

Hon'ble Judges : Avneesh Jhingan, J; Maneesh Sharma, J

Bench : Division Bench

Advocate : Sanjay Jhanwar, Rajat Sharma, Akshay Sharma, Shantanu Sharma,
Parth Vashishtha, Aditya Doda

Final Decision : Allowed

Judgement

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Avneesh Jhingan, J

1. Civil Writ Petition No.20943/2019 is filed assailing the order dated 19.10.2019 dismissing the objections filed against the re-opening of assessment under Section 148 of the Income Tax Act, 1961 (hereinafter 'the Act') and show cause notice dated 24.10.2019 (hereinafter 'SCN') issued under Section 148 of the Act. Civil Writ Petition No.21086/2019 is filed seeking quashing of the reassessment order dated 11.11.2019.

2. The petitioner for assessment year 2012-13 filed return declaring 'nil' income. The assessment under Section 143(3) of the Act was finalized on 30.03.2014. Subsequent proceedings for assessment initiated on basis of revised return filed for correcting error in claiming depreciation were dropped on 19.03.2015 considering that the assessment has already been completed. On 29.03.2019 notice under Section 148 of the Act was issued. The reasons that the information received from Director General of Income Tax (Investigation) Mumbai (for brevity

'DGIT') form basis that there is escaped assessment were supplied on 05.08.2019. The petitioner filed objection dated 10.10.2019. On dismissal of objection CWP No.20943/2019 was filed. While issuing notice, the order if passed in pursuance to SCN was made subject to outcome of writ. CWP No.21086/2019 was filed challenging the reassessment order dated 11.11.2019.

3. Learned counsel for the petitioner submits that the proceedings were initiated in absence of tangible material and solely relying upon the third party information. The argument is that the assessment was finalized under Section 143(3) of the Act and impugned SCN could not have been issued after completion of four years from the relevant assessment year. Contention is that assessee had fully and truly disclosed the necessary material facts and SCN is time barred. The submission is that the reassessment order is not sustainable on merits, the addition made is without any basis. Reliance is placed upon the decision of Supreme Court in Commissioner of Income Tax, Gujarat Vs. A. Raman & Co. reported in [(1967) 68 ITR 11], decision of this Court in Micro Marbles Private Limited Vs. Office of the Income Tax Officer reported in [(2023) 457 ITR 569] and decision of High Court of Andhra Pradesh in Kohinoor Hatcheries Pvt. Ltd. Vs. Deputy Commissioner of Income Tax & Anr. reported in [(2016)389 ITR 493].

4. Learned counsel for the revenue submits that the petitioner has challenged the reassessment order by filing appeal and all the issues can be gone into by the appellate authorities. The contention is that on the basis of information received from DGIT there was material available with the department to have reasons to believe that income chargeable to tax has escaped assessment. The order dated 19.10.2019 is defended by stating that the objections were decided in accordance with law.

5. The Supreme Court in GKN Driveshafts (India) Limited Vs. Income Tax Officer & Ors reported in [(2003) 259 ITR 19] held that the reasons for reopening are to be supplied to assessee and the objections filed against reopening are to be dealt with by passing a speaking order.

6. There is no statutory remedy provided against the order dealing with the objections. The writ court can prima facie satisfy the existence of basis to reopen the assessment. The sufficiency or correctness of the material is not to be considered at this stage. The Supreme Court in Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. reported in [(2007) 72 ITR 500] held:

"16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word 'reason' in the phrase 'reason to believe' would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment.

The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.”

In *Raymond Woolen Mills Limited vs. Income Tax Officer, Centre XI, Range Bombay* and others reported in [(1999) 236 ITR 34 (SC)] law laid is:-

“3. In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority.”

7. The procedure laid down by the Supreme Court in *GKN Driveshafts* (supra) was later made part of the Act by insertion of Section 148-A. It is a safeguard provided to check arbitrary exercise of power of reopening and to ensure that the proceedings are being initiated on existence of prima facie basis.

8. Albeit, there is no statutory remedy against the order rejecting the objections, at same time it cannot be lost sight that it is a stage where the proceedings have not concluded. The petitioner gets ample opportunity during the proceedings before the different statutory forum to agitate that the findings arrived at are erroneous. Delhi High Court in the case of *Gulmuhar Silk Pvt. Ltd. Vs. Income Tax Officer* reported in [(2022) 326 CTR 244] held:

“6. Though it is the petitioner's case that the impugned order is erroneous on facts, yet this Court is of the opinion that the petitioner would have ample opportunity during the course of proceedings before different statutory forums to show that the finding of fact arrived at was erroneous. Moreover, at this stage, no assessment order has been passed and it has only been observed that it is a fit case for issuance of notice under Section 148 of the Act. In fact, the Supreme Court in *Commissioner of Income Tax and Ors. Vs. Chhabil Das Agarwal*, (2014) 1 SCC 603 has held that as the Income Tax Act, 1961 provides complete machinery for assessment/reassessment of tax, assessee is not permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226. Consequently, the present case does not fall under the exceptional grounds on which a writ petition is maintainable at the interim stage in tax matters.”

9. The Punjab and Haryana High Court in case of *Sumit Passi Vs. Assistant*

Commissioner of Income-tax (2016) 386 ITR 46 held:-

"29. The reasons assigned by the Assessing Officer to tentatively believe that taxable income has escaped assessment cannot be brushed aside at the threshold without a fact-finding procedure, more so when the petitioners are not remediless and have got equally efficacious recourses under the Act."

Punjab and Haryana High Court in Anshul Jain Vs. Principal Commissioner of Income Tax and Ors. reported in [(2022)449 ITR 251], the Court held :-

"11. Thus, the consistent view is that where the proceedings have not even been concluded by the statutory authority, the writ court should not interfere at such a premature stage. Moreover it is not a case where from bare reading of notice it can be axiomatically held that the authority has clutched upon the jurisdiction not vested in it. The correctness of the order under section 148A(d) is being challenged on the factual premise contending that jurisdiction though vested has been wrongly exercised. By now it is well settled that there is vexed distinction between jurisdictional error and error of law/fact within jurisdiction. For rectification of errors statutory remedy has been provided."

The SLP filed against this decision was dismissed on 02.09.2022 and following order was passed:-

"1. What is challenged before the High Court was the reopening notice under section 148A(d) of the Income-tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the reassessment proceedings.

2. Under the circumstances, the High Court has rightly dismissed the writ petition.

3. No interference of this court is called for.

4. The present special leave petition stands dismissed.

5. Pending applications stand disposed of."

10. The facts of the present case are that the department received an information from the DGIT vide letter dated 03.07.2014. The information was that the petitioner had taken accommodation entries to the tune of Rs.95,00,000/- from the shell company managed by Mr.Praveen Kumar Jain and other entry operators. After preliminary enquiry of the information received, notice under Section 148 was issued.

10.1 The petitioner raised objections:-

(i) that during the course of assessment u/s 143(3) the details of addition to the share capital and confirmation from the person subscribing share capital was furnished and there cannot be reopening on this issue;

(ii) that notice could not have been issued after four years from the end of the relevant assessment year when the petitioner had fully and truly disclosed the necessary material and the assessment was framed u/s 143(3);

(iii) that the information received by the department was not taken cognizance by the AO in the assessment proceedings initiated after filing of the revised return and completed on 19.03.2015; and lastly

(iv) the notice was issued at the end of limitation without application of mind.

11. The objections were dealt in detail. The AO held that confirmation from the shareholders subscribing the capital was not produced by the petitioner and is not available on record. Rather it is recorded that the petitioner had not furnished confirmation from the shareholders in the ongoing assessment.

Neither from the assessment order nor from record it is forthcoming that veracity and financial capacity of entities making payment to the petitioner was gone into during the assessment proceedings. The proceedings of reopening cannot be stalled at the threshold as the challenge to reopening is of factual issues which need a deeper probe in proceedings under Section 148 of the Act.

12. The challenge to notice being time barred will depend upon answer to a mixed question of law and fact as to whether there was true and full disclosure of the material facts by the petitioner.

13. The assessment of the petitioner was finalized under Section 143(3). Thereafter the petitioner filed revised return correcting the clerical error in claiming the depreciation. On the basis of the revised return the assessment proceedings were initiated but dropped on 19.03.2015, considering that there cannot be two assessment for an assessment year and the issues on merit were not gone into.

14. The objection that while dropping the assessment proceedings vide order dated 19.03.2015 the AO had not taken cognizance of the information given by DGIT was rightly rejected. There was no occasion for AO to go into any other issue after holding that the proceedings cannot continue in view of assessment having already been completed.

15. The contention that the proceedings were initiated merely on receipt of information from the investigation wing and without application of mind, lacks merit.

16. On receipt of material from the investigation wing a preliminary enquiry was held by the AO. Issuance of notice under Section 133(6) revealed that the transaction pertained to Assessment Year 2012-13 and not to 2013-14. There is a tangible material available with the AO to make basis for having reasons to believe that there is escaped assessment. The AO is not required to finally concluded on the relevancy of the material and to hold that it is sufficient and ultimately would result in making an addition.

17. In all fairness we deal with the authorities relied upon by learned senior counsel for the petitioner. Reliance on decision of A. Raman & Co. (supra) does not enhance the case of the petitioner. In the facts of that case it was held that reasons to believe for escaped assessment were not existing. Whereas in the present case consequent to information received from investigation wing Mumbai a prima facie basis exists to proceed under section 148.

18. In case of Micro Marbles Private Limited (supra) the notice under Section 148 and the proceedings consequent thereto were quashed for failure of the department to supply the information received from the investigation wing and documents being relied upon.

19. In case of Kohinoor Hatcheries Pvt. Ltd. (supra) from the questionnaire issued during the assessment proceedings it was evident that there was full and true disclosure of the material facts by the assessee. In the case in hand the claim of the petitioner that during assessment the confirmation from the shareholder and subscribers was produced and considered has been factually found wrong.

20. No case is made out for interference in the impugned order.

In CWP No.21086/2019:-

21. The petitioner has challenged the reassessment order and contention is that the re-assessment order was subject to outcome of the writ petition No.20943/2019 and the order should be tested on merits.

22. The revenue has taken an objection that the petitioner after filing the writ petition has availed remedy of appeal against the reassessment order and this fact is not disclosed.

23. Learned senior counsel for the petitioner submits that availability of an alternative remedy is not absolute bar for entertaining the writ petition.

The proposition put forth need not be gone into and dilated upon as the case in hand is not of availability of remedy of appeal but here the petitioner has availed it. The petitioner cannot be allowed to avail two parallel remedies simultaneously.

24. Moreover, after we have decided not to interfere in the order rejecting the objections to reopening and petitioner has availed remedy of appeal against reassessment order, no case is made out bringing the petition within ambit of the exceptions carved out by supreme court for entertaining the writ inspite of availability of alternative remedy.

25. The writ petitions are dismissed. The petitioner shall be at liberty to pursue the appeal and raise all issues before the appellate authority.