



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.429/2024

SHRI DILIP LAXIMAN POWAR
Represented by his Power of Attorney
Mrs Aneeta @ Anita Dilip Powar,
59 years, H.No.4/123, Porba Vaddo,
Calangute, Bardez, North Goa,
Goa 403516.

... PETITIONER

Versus

INCOME TAX OFFICER,
Ward 2 (1), "Ayakar Bhawan",
Panaji-Goa.

... RESPONDENT

Mr. Sahish Mahambrey, Advocate for the Petitioner.

Ms Amira Razaq, Standing Counsel for the Respondent.

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.**

DATE: 30th JULY 2024

JUDGMENT: (Per M. S. Karnik, J.)

1. Heard Mr Sahish Mahambrey for the petitioner and Ms Amira Razak, learned Standing Counsel for the respondent.
2. This petition, under Articles 226 and 227 of the Constitution of India, challenges a notice dated 19.03.2024 under Section 148-A of the Income Tax Act, 1961 (said Act for short). The facts of the case in brief are as follows.

3. The petitioner is paralysed and therefore represented by his wife. The petitioner is running the business of Hardware and Paint (Retail) which is a proprietorship firm in the name and style of Dilip Traders at Naikwado, Calangute, Goa. The petitioner has been filing his income tax returns and paying the necessary tax for more than ten years. The petitioner along with his wife filed returns for the Assessment Year 2017-18. A notice under Section 142(1) and Section 129 of the said Act was issued to the petitioner and upon necessary explanation given by the petitioner and after due verification the assessment was completed by accepting the income return filed by the petitioner vide Assessment Order dated 31.12.2019 passed under Section 143(3) of the said Act.

4. The petitioner received notice dated 19.03.2024 under Section 148-A(b) of said Act stating that the income chargeable to tax has escaped assessment for the Assessment Year 2017-18 and the petitioner was asked to show cause as to why notice under Section 148 of the said Act should not be issued.

5. The petitioner filed response to the show cause notice vide his reply dated 21.03.2024 stating that the notice has been received after a period of three years after the completion of assessment and hence, it was beyond the period of three years as mandated under Section 148 of the said Act. It was further stated that the internal audit observation and change of opinion cannot be the sole ground to issue show cause notice under Section 148-A of the said Act as there have been no new facts noticed in the audit.

6. Despite the reply, it is the case of the petitioner that the respondent is conducting the investigation and seeking queries pursuant to the notice dated 19.03.2024. Present petition is therefore filed challenging the

validity of the notice dated 19.03.2024 issued under Section 148-A(b) of the said Act.

7. Ms Amira Razak, learned Standing Counsel for the respondent invited our attention to the affidavit-in-reply filed on behalf of the respondent. It is submitted that the assessee filed returns of income on 31.03.2018 declaring total income of Rs.11,04,870/-. She submitted that the case of the petitioner was selected for scrutiny through Computer Assisted Scrutiny System (CASS). It is submitted that the scrutiny assessment was completed on 31.12.2019 under Section 143(3) of the said Act by accepting the return of income of the assessee. Further, the said assessment was audited by the Internal Audit Party on 13.03.2021 and the said Internal Audit Party raised the objection that the assessee has cash balance of Rs.6,30,856/- as on 08.11.2016 whereas, the assessee had deposited cash of Rs.71,81,000/- in Specified Bank Notes (for short SBNs) during the demonitization period. It is submitted that the business of the assessee was not amongst those which were permitted to receive SBNs currency even after 08.11.2016.

8. Ms Razak further submitted that the assessee is governed by the amended provisions of Sections 147 to 149 with effect from 01.04.2021. She submitted that in terms of Section 148 as amended with effect from 01.04.2021, objection by the Internal Audit Party comes with expression “information with the Assessing Officer”. Relying on Section 148, Ms Razak submitted that in view of the specific and clear information highlighted by the Internal Audit Party, case of the assessee was examined and taken up under Section 147 and notice under Section 148-A was issued to the petitioner.

9. Ms Razak further submitted that on the basis of the objection by the Internal Audit Party and pursuant to examining the records and due application of mind, notice under Section 148-A(b) of the said Act was issued to the assessee on 19.03.2024 to show cause as to why a notice under Section 148 of the said Act should not be issued and assessment re-opened for the relevant Assessment Year.

10. It is submitted that the notice under Section 148-A(b) has been validly issued after examining the records pursuant to the audit objection as per Clause (ii) of the explanation 1 of Section 148 of the said Act, and since the income chargeable to tax i.e. Rs.66,49,144/- exceeds Rs.50 lakhs, the notice under Section 148-A(b) has been validly issued after the period of three years as per Section 149(1)(b) of the said Act.

11. It is then submitted by Ms Razak that after examining the records and considering the reply of the party to the notice under Section 148-A(b), an Order under Section 148-A(d) of the said Act was passed on 27.03.2024. It is submitted that the issue raised in the notice of reopening is required to be examined in detail and the present case is not one in which the notice could be quashed at the initial stage in exercise of extraordinary powers of this Court under Article 226 of the Constitution of India. According to Ms Razak, as per the material on record, the case of the petitioner involves escapement of income from the tax net and consequently the income for the relevant assessment year requires to be reassessed. An objection is further raised that the petitioner has an adequate, alternate and efficacious remedy of challenging any order passed under Section 148 by the Faceless Assessment Officer, who would examine the matter under Section 148.

12. Ms Razak urged that no prejudice would be caused to the petitioner as the petitioner will be able to show all his records and have a full and fair opportunity of hearing before the Faceless Assessment Officer (FAO) during the process of reassessment. It is lastly submitted by Ms Razak that grave prejudice will occasion to the interest of public revenue if the income chargeable to tax is allowed to escape assessment by quashing the notices at this preliminary stage without any opportunity of examination by the process of reassessment. Ms Razak was at pains to point out that explanation 1(ii) of Section 148 which has been introduced by the Finance Act 2021 with effect from 01.04.2021 supports the contentions of the respondent.

13. The rival contentions now fall for our determination.

14. The relevant portion of Section 148 which deals with the issue of notice when the income has escaped assessment reads thus:-

“148 Issue of notice where income has escaped assessment.

Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section

139: Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice: [Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section.

*Explanation 1.- For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means, - (i) any information [***] in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; (ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or....."*

15. Having perused Section 148 of the said Act extracted above, we now seek guidance from the decision of the Hon'ble Supreme Court in *Mangalam Publications v/s. Commissioner of Income Tax – (2024) 158 taxmann.com 564 (SC)*, in support of our conclusions. We seek guidance from the observations made therein. Paragraph 35 reads thus:-

"35. Kelvinator of India Ltd. (supra) is a case where this Court examined the question as to whether the concept of "change of opinion" stands obliterated with effect from 1-4-1989 i.e. after substitution of section 147 of the Act by the Direct Tax Laws (Amendment) Act, 1987. This Court considered the changes made

in section 147 and found that prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under two conditions i.e., (a) the Income-tax Officer had reason to believe that by reason of omission or failure on the part of the assessee to make a return under section 139 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax had escaped assessment for that year, or (b) notwithstanding that there was no such omission or failure on the part of the assessee, the Income-tax Officer had in consequence of information in his possession reason to believe that income chargeable to tax had escaped assessment for any assessment year. Fulfilment of the above two conditions alone conferred jurisdiction on the assessing officer to make a re-assessment. But with effect from 1-4-1989, the above two conditions have been given a go-by in section 147 and only one condition has remained, viz, that where the assessing officer has reason to believe that income has escaped assessment, that would be enough to confer jurisdiction on the assessing officer to reopen the assessment. Therefore, post 1-4-1989, power to reopen assessment is much wider. However, this Court cautioned that one needs to give a schematic interpretation to the words "reason to believe", otherwise section 147 would give arbitrary powers to the assessing officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen."

16. In the present case, the issue of specified bank notes having been deposited by the assessee during the demonitization period was already examined by the Assessment Officer in his Order dated 31.12.2019. The Assessment Officer was alive to the fact that only specified businesses such as hospitals, gas agencies etc. were allowed to transact with the

demonetized cash. The Assessing Officer has accepted the income returned by the Assessee after examining the records produced.

17. The objection raised by the Internal Audit Party at Annexure F, page 53 records : “*the A.O. During the course of assessment proceedings has queries about the sources of SBN currency deposited during the demonetization period. For which, the assessee submitted the sources out of business receipts. The assessee also submitted the cash book which is placed on record. The A.O. In the concluding para has mentioned that the cash balance as on 08/11/2016 and hence the sources of SBN are duly explained.*”

18. The record thus shows that in the scrutiny assessment under Section 143(3), the issue of deposit of SBNs by the assessee during the demonetization period has been examined in detail by the Assessment Officer and the same objection is now raised by the audit party which, in our considered view, would amount to an attempt to review the same issue and consequently come within the fold of change of opinion which is not permissible in accordance with the settled position of law. As indicated earlier, we have relied upon *Mangalam Publications v/s. Commissioner of Income Tax (supra)* in support of the view that we take.

19. In our opinion, it is not necessary to go into the scope and import of explanation 1(ii) to Section 148 in the present facts and the same is left open to be examined in an appropriate case.

20. Consequently, the petition is allowed. The impugned notice dated 19.03.2024 at Exh.D of the petition under Clause (b) of Section 148-A of the Income Tax Act, 1961 is quashed and set aside.

21. There shall be no order for costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.