

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE MANINDER SINGH BHATTI

ON THE 3rd OF MARCH, 2022

WRIT PETITION No. 28293 of 2021

Between:-

**YUVRAJ S/O LATE SUKHVIR SINGH JAIN , AGED ABOUT 61 YEARS,
OCCUPATION: GOVT.EMPLOYEES H.A.-1, MUNSHI PREMCHAND PARISAR,
AIRPORT ROAD, BHOPAL (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ASHAY JAIN, ADVOCATE)

AND

- 1. INCOME TAX OFFICER 3(1) INCOME TAX OFFICER MATRO WALK
BUILDING, BITTAN MARKET, BHOPAL (MADHYA PRADESH)**
- 2. PRINCIPAL COMMISSIONER OF INCOME TAX 1 AAYKAR BHAWAN, 48,
ARERA HILLS BHOPAL (MADHYA PRADESH)**
- 3. CENTRAL BOARD OF DIRECT TAXES THR. ITS CHAIRMAN NORTH BLOCK
NEW DELHI (DELHI)**
- 4. UNION OF INDIA THR. REVENUE SECRETARY, DEPARTMENT OF REVENUE
MINISTRY OF FINANCE NORTH BLOCK NEW DELHI (DELHI)**

.....RESPONDENTS

(BY SHRI SANJAY LAL, ADVOCATE)

This appeal coming on for admission and interim relief this day,

Hon'ble Shri Justice Maninder Singh Bhatti passed the following:

ORDER

The present petition has been filed by the petitioner while praying for grant of following reliefs:-

I. To issue a Writ in the nature of Certiorari or any other appropriate writ order or direction, thereby quashing 'the impugned notice no. ITBA/AST/S/148/2020-21/1032088407 (1) dated 31.03.2021 (served through email on 16.04.2021) (Annexure P/1) and the impugned notice

no.ITBA/AST/F/142(1)/2021-22/1037509888(1) dated 6.12.2021 (Annexure P/6), for being void and illegal;

II. To issue a Writ in the nature of Certiorari or any other appropriate writ order or direction, thereby quashing and setting aside the impugned Explanation to Clause (A) (a) of Notification No. 20/2021, dated 31.03.2021 (Annexure P/2) for being void and illegal;

III. To issue a Writ in the nature of Certiorari, or any other appropriate writ order or direction, thereby quashing and setting aside the Explanation to clause (A) (b) of Notification No. 38/2021, dated 27.04.2021 (Annexure P/3) for being void and illegal;

IV. To grant any other relief, which the Hon'ble Court may deem just and proper on the facts and circumstances of the case, alongwith the cost of this petition.

2. The contention of the petitioner is to the effect that a newly enacted provision i.e. Section 148-A has been inserted in Income Tax Act, 1961 (hereinafter referred as 'the Act, 1961') makes it mandatory for the Assessing Officer to give a notice requiring the concerned assessee to furnish the information as regards his income including returns. According to the petitioner the newly inserted section 148-A of the Act, 1961 has come into force with effect from 1/04/2021. The petitioner submits that an impugned notice has been issued to the petitioner which has been issued under the omitted section 148 of the Act, 1961. Though the same is dated 31/03/2021 but the same was served upon the petitioner on 16/04/2021 through Email. The contention of the petitioner is to the effect that since the proceedings for re-assessment were sought to be initiated after 1/04/2021 therefore, it was incumbent upon the Assessing Authority to first issue a notice under section 148-A upon the

petitioner and thereafter dealing with the same in accordance with the procedure laid down in section 148-A, a full fledged enquiry ought to have been conducted by giving opportunity of hearing to the petitioner/assessee. Thus, according to the petitioner no notice directly under section 148 of the Act, 1961 could have been issued on 16/04/2021 when the old section 148 stood omitted upon insertion of new section 148-A which came into force with effect from 1/04/2021. Thus, the petitioner submits that the impugned notice which is contained in Annexure P/1 dated 31/03/2021 (served through Email on 16/04/2021) be quashed. The petitioner has also sought quashing of the notice dated 6/12/2021 which is contained in Annexure P/6 as well as the notification dated 31/03/2021 contained in Annexure P/2 and also the notification dated 27/04/2021 contained in Annexure P/3.

3. To deal with the controversy involved in the matter, it is necessary to refer the relevant provisions of Finance Act, 2021 by which the sections 147 to 149 and 151 of the Income Tax Act, 1961 stand substituted and a new section i.e. section 148-A has been inserted.

PRELIMINARY

- (1) This Act may be called the Finance Act, 2021.*
- (2) Save as otherwise provided in this Act,*
 - (a) Sections 2 to 88 shall come into force on the 1st day of April, 2021,*
 - (b) Sections 108 to 123 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint....*

Section 40 - For section 147 of the Income-tax Act, the following section shall be substituted, namely:—

“147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153

referred to as the relevant assessment year).

Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.”.

41. For section 148 of the Income-tax Act, the following section shall be substituted, namely:—

“148. 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.

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 flagged 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 final objection raised by the Comptroller and Auditor-General of India 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.

After section 148 of the Income-tax Act, the following section shall be inserted, namely:—

“148A. The Assessing Officer shall, before issuing any notice under section 148 -

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires;

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or
(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or

after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee. Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”

4. The aforesaid newly inserted section 148-A now specifically provides for issuance of a notice if the Assessing Officer takes a decision to initiate re-assessment and therefore, a procedure has been laid down under section 148-A which is required to be adhered to by the Assessing Officer after 1/04/2021 i.e. the date on which the Finance Act, 2021 came into force.

5. The counsel for the parties were heard and during the course of hearing, the counsel for respondent/revenue Shri Sanjay Lal produced a letter dated 24/02/2022 bearing no. 1002 issued by Income Tax Officer - 3 (1) of Bhopal which was addressed to the counsel for the revenue and in the said letter it was stated that though in the notice which was issued to the petitioner herein, the date was mentioned as 31/03/2021 but, the system of the office of the respondents revealed that the Email to the petitioner was infact sent on 16/04/2021. Thus, the counsel for respondent does not dispute that the notice which is impugned in the petition contained in Annexure P/1 infact was issued on 16/04/2021 though the date on the same was mentioned as 31/03/2021 but was issued later on 6/04/2021.

6. In view of the aforesaid letter so produced before us dated 24/02/2022 and in view of the admission by the counsel for respondents, we have no hesitation to hold that the impugned notice is bad in the eye of law, contained in Annexure P/1 dated 31/03/2021 (received by the petitioner on 16/04/2021 through Email) inasmuch as after 1/04/2021, it is mandatory requirement that prior to re-assessment proceedings notice under section 148-A of Income Tax Act, 1961 should be issued to assessee. Since now in view of the admission by

the respondents the other reliefs as sought for by the petitioner in the relief clause have become redundant inasmuch as now there is no dispute about the date of issuance of the impugned notice.

7. Accordingly, the impugned notice dated 31/03/2021 (served through Email to the petitioner on 16/04/2021) stands quashed. However, it is left open for the respondents to take recourse to the procedure laid down in newly enacted section 148-A of the Income Tax Act, 1961 if it is required under the law.

8. Thus, the writ petition stands allowed to the extent indicated above.

(SHEEL NAGU)
JUDGE

(MANINDER SINGH BHATTI)
JUDGE

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