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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11334/2022 & C.M.No.33392/2022

RITHALA EDUCATION SOCIETY APPLICANT SOCIETY
RUNNING/OWNING CITIZEN MODEL SCHOOL RITHALA

..... Petitioner

Through: Mr.Kapil Goel, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Bhagwan Swarup Shukla, CGSC
with Mr.Gokul Sharma, Advocate for
UOI.

Mr.Sanjay Kumar, Sr.Standing
Counsel for the Revenue with
Ms.Easha Kadian, Advocate.

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Date of Decision: 16th August, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the order passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and notice issued under Section 148 of the Act for the Assessment Year (AY) 2018-19, both dated 08th April, 2022 to the Citizen Model School, which is run by the petitioner-society.

SUBMISSIONS ON BEHALF OF THE PETITIONER.

2. Learned counsel for the petitioner states that the petitioner-society filed its return of income for the AY 2018-19 declaring 'Nil' income and in the column '*details of projects/institutions run by you*', the petitioner-society disclosed that the petitioner-society runs the Citizen Model School having aggregate annual receipt of Rs.1,82,03,712/- in the relevant assessment year.

3. He states that the respondents issued a show cause notice dated 22nd March, 2022 under Section 148A(b) of the Act to Citizen Model School seeking to reopen the assessment of the school for the AY 2018-19 on the ground that it has entered into multiple transactions such as cash deposits, payments to contractors etc. and has not filed any return of income for the relevant assessment year.

4. He further states that the petitioner-society had filed a detailed reply to the show cause notice dated 22nd March, 2022 stating that no income has escaped assessment as all the cash deposits stated in the show cause notice have been accounted for by the petitioner-society in its return of income. He points out that the petitioner-society specifically clarified that the petitioner-society has accounted/incorporated all the financial transactions undertaken by the Citizen Model School while filing its return of income.

5. Learned counsel for the petitioner states that the respondents have sought to treat the Citizen Model School as an assessable person, which is not permissible as the school is run and managed by the petitioner-society and is thus a part of the petitioner-society itself. In support of his submission, he relies upon the decision of the Gujarat High Court in the case of ***Sardar Vallabhbhai Patel Education Society v. Income Tax officer Civil Application No. 20804 of 2017***, wherein it has been held as under:-

“3. This is a second round of litigation. The writ-applicant had come before this Court by filing the Special Civil Application No.17878 of 2016. The said writ-application was ordered to be disposed of vide order dated 11th September 2017. The order reads thus :

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3. The Assessing Officer noticed that N.G.Patel polytechnic had a separate PAN and in its savings bank account of Bank of Baroda, sizable cash amount of Rs.2.37 crores was deposited, on which, it had also received interest of Rs.2.40 lakhs. Despite this, N.G.Patel polytechnic had not filed return of income for the said assessment year 2009-10. On such basis, N.G.Patel polytechnic was served with an impugned notice dated 22.03.2016 for reopening of the assessment. The only ground recorded by the Assessing Officer in the reasons for issuing the notice was that despite depositing of sizable cash of Rs.2.37 crores in the said savings bank account, the said account holder had not filed the return of income and in response to the notice issued by the department under section 48 of the Act to furnish a source of the cash deposited, there was no response from the account holder.

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7. It can thus be seen that mere allotment of PAN under section 139A of the Act would not make the allottee necessarily a separate entity for the purpose of assessment of tax. The statute recognizes certain eventualities where quite outside the requirement of payment of tax and for filing return of income, the Assessing Officer may allot a PAN to individual. The contention of the Assessing Officer therefore that merely because N.G.Patel polytechnic had obtained the PAN, it was a separate entity for the purpose of filing of the return and assessment of tax was not valid. In the order rejecting the objections, the Assessing Officer did not examine other objections and contentions raised on behalf of the writ-applicant on his summary conclusion noted above.....

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8. It is to be noted here that the respondent has not denied the fact that the Sardar Patel Education Society has included all the transactions carried out by the Polytechnic in its books of accounts, and in turn, filed the return of income taking into consideration all

the transactions carried out by the Polytechnic. The aforesaid return of income filed by the Society was also accepted by the Income Tax Department for the year under consideration.

9. The case of the respondent is that the objections taken by the writ-applicant will be examined with reference to the books of accounts at the time of carrying out the reassessment proceedings. Thus, the stance of the department is directly contrary to the direction issued by this Court. The respondent failed to appreciate that, when the fundamental facts on which the jurisdiction is assumed, is proved incorrect, then the very assumption of jurisdiction is rendered invalid. In the present case, the Society is able to point out that the assertion of the department that the transaction carried out in the Bank of Baroda by the Polytechnic has already been accounted for by the Society in its books of accounts as the Polytechnic is not a separate assessable entity within the ambit of the Income Tax Act. Thus, if the respondent wants to assume the jurisdiction to carry out the reassessment proceedings, the respondent has to arrive at the conclusion that the aforesaid factual position taken out by the writ-applicant Trust is factually incorrect.....

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Our final conclusions may be summarised as under :

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(vi) The basic requirement that there has to be income which has escaped the assessment is completely missing as the Department itself has assessed the income of the Polytechnic and other institutes run by the Society as the income of the Society and in fact even in the later assessment years i.e. for the Assessment Years 2016-17 to 2018-19 in scrutiny assessment in 143(3) assessed the income so offered as the income of the writ-applicant Society itself.

6. In view of the aforesaid, these writ-applications succeed and are hereby allowed. The impugned notice issued under Section 148 of the Act for the relevant assessment years is hereby quashed and set-aside.”

SUBMISSIONS ON BEHALF OF RESPONDENTS-REVENUE.

6. *Per contra*, Mr.Sanjay Kumar, learned Senior Standing Counsel for the respondents-revenue submits that the present writ petition is premature inasmuch as by way of impugned order, only a notice under Section 148 of the Act has been issued.

7. He also relies upon the judgment of Punjab and Haryana High Court in ***Gian Castings Private Limited vs. Central Board of Direct Taxes and Ors., CWP No.9142/2022***, wherein it has been held as under:-

“12. 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 pre-mature 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. 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.

13. In the light of aforesaid settled proposition of law, we find that there is no reason to warrant interference by this Court in exercise of the jurisdiction under Article 226/227 of the Constitution of India at this intermediate stage when the proceedings initiated are yet to be concluded by a statutory authority. Hence, the instant writ petition stands dismissed.”

8. Mr.Sanjay Kumar further states that to co-relate the cash deposit of Rs.1,31,68,335/- with the return filed by the petitioner-society is a herculean task, which should be done during the assessment proceedings only.

COURT'S REASONING

NEW RE-ASSESSMENT SCHEME WAS INTRODUCED BY THE FINANCE ACT, 2021 WITH THE INTENT OF REDUCING LITIGATION AND TO PROMOTE THE EASE OF DOING BUSINESS.

9. This Court in ***Divya Capital One Private Limited (Earlier Known as Divya Portfolio Private Limited) vs. Assistant Commissioner of Income Tax Circle 7(1) Delhi & Anr., W.P.(C) No.7406/2022*** decided on 12th May, 2022 has held that the new re-assessment scheme was introduced by the Finance Act, 2021 with the intent of reducing litigation and to promote the ease of doing business. It was further held that the mandate of Section 148A(c) of the Act shall be taken to have been breached if the order under Section 148A(d) of the Act does not consider the reply filed by the assessee.

THE IMPUGNED ORDER HOLDS THAT INCOME HAD ESCAPED ASSESSMENT AS NO RETURN OF INCOME HAD BEEN FILED BY THE SCHOOL WITHOUT DEALING WITH THE CONTENTION OF THE PETITIONER-SOCIETY THAT ALL THE FINANCIAL TRANSACTIONS OF THE SCHOOL HAD BEEN ACCOUNTED FOR IN ITS RETURN OF INCOME.

10. In the present case, the significance of issuance of a show cause notice at a stage prior to issuance of a re-assessment notice under Section 148 of the Act has been lost on the respondents inasmuch as the impugned order under Section 148A(d) of the Act has been passed without considering the detailed reply filed by the petitioner dated 03rd April, 2022. It is pertinent to mention that though the impugned order notes that the Citizen Model School is being run by the petitioner-society, yet it goes on to hold that income had escaped assessment as no return of income had been filed by the school without dealing with the contention of the petitioner-society

that all the financial transactions of the school had been accounted for in its return of income.

11. In fact, it is the case of the petitioner-society that right from inception it has been assessed to the Income Tax Act qua Citizen Model School and that the School had aggregate annual receipt of Rs.1,82,03,712/- during the relevant assessment year and not just Rs.1,31,68,335/- as mentioned in the show cause notice.

JUDGMENT OF THE GUJARAT HIGH COURT IN SARDAR VALLABHBHAI PATEL EDUCATION SOCIETY (SUPRA) IS SQUARELY APPLICABLE TO THE FACTS OF THE PRESENT CASE. THE CHALLENGE BEFORE US IS NOT TO THE MERITS OF THE ORDER BUT TO THE BREACH OF THE STATUTORY MANDATE OF SECTION 148-A (C) OF THE ACT, WHICH ERROR IS EVIDENT ON THE FACE OF THE RECORD.

12. This Court is also of the view that the judgment of the Gujarat High Court in **Sardar Vallabhbhai Patel Education Society** (supra) is squarely applicable to the facts of the present case. In **Gian Castings Private Limited** (supra) the facts which were in controversy have not been set out and therefore it is not possible to assume that there is any similarity with the facts in the present proceedings. The said judgment merely records that the merits of the order passed under Section 148 were under challenge.

13. The challenge before us as noted above is not to the merits of the order but to the breach of the statutory mandate of Section 148-A (c) of the Act, which error is evident on the face of the record. Accordingly, the judgment of the Punjab & Haryana High Court in **Gian Castings Private Limited** (supra) offers no assistance to the respondents.

RELIEF

14. Consequently, as the respondents-revenue have not examined the petitioner's plea that the petitioner-society has included all the transactions carried out by the Citizen Model School in its books of accounts, the impugned order passed on the ground that '*the case of the petitioner-society was of non-filing of return*' is set aside and the matter is remanded back to the Assessing Officer to pass a fresh order under Section 148A(d) of the Act in accordance with law within eight weeks.

15. With the aforesaid observations and direction, the present writ petition along with pending application stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 16, 2022
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