Reserved

Court No. - 21

Case :- WRIT TAX No. - 572 of 2018

Petitioner :- Chandra Mohan Tiwari
Respondent :- Income Tax Officer-1(1), Kanpur And 3 Others
Counsel for Petitioner :- Abhinav Mehrotra
Counsel for Respondent :- S.S.C.,A.S.G.I.,Ashish Agrawal,Subham Agrawal

Hon'ble Krishna Murari,J.
Hon'ble Ashok Kumar,J.

(Delivered by Hon'ble Ashok Kumar, J.)

Heard Sri Abhinav Mehrotra, learned counsel for the petitioner, Sri Shubham Agrawal, learned senior standing counsel, Sri Ashish Agrawal, learned junior standing counsel for the Income Tax Department and Sri Vaibhav Tripathi, learned counsel appearing for respondent no.3.

The instant writ petition has been filed by the petitioner against the notice of re-assessment issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

The petitioner has challenged the notice of re-assessment issued on 14.4.2017 by the respondent no.1, Income Tax Officer – 1(1), Kanpur for initiating re-assessment proceedings for the Assessment Year 2014-15 and the order dated 7.3.2018, which is an order passed by respondent no.1 by which the objection raised with regard to re-assessment proceedings are disposed of.

The brief facts of the case are that the petitioner Chandra Mohan Tiwari, an individual by status, has filed his return of income for A.Y. 2014-15, declaring a total income of Rs.2,27,590/-.

During the course of proceedings for A.Y. 2014-15 the assessing authority noticed that the petitioner has purchased an immovable property during the financial year 2013-14 relevant to assessment year 2014-15 for a consideration of Rs.20,00,000/- having stamp value of Rs.1,55,60,000/- and the petitioner has not furnished the source of investment of the aforesaid amount of Rs.20,00,000/-. On the basis of the aforesaid information the Assessing Authority *prima facie* was of the opinion that the said investment has escaped assessment for the A.Y. 2014-15.

The assessing authority has recorded the following reasons for issuance of notice under Section 148 dated 19.4.2017 :

> *"The Department is in the possession of information that assessee has purchased immovable property during F.Y. 2013-14 relevant to A.Y. 2014-15 for a consideration of Rs.20,00,000/- having stamp value of Rs.1,55,60,000/-. Therefore, the source of investment of Rs. 20,00,000/- has escaped assessment for the A.Y. 2014-15.*
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> *After examination of ITR and other paper, I have reason to believe that the income with regard to source of investment of Rs.1,55,60,000/- (Rs.20,00,000/- for purchase of property and Rs.1,35,60,000/- difference between stamp value and purchase value u/s 56(2)(vii)(b) of the I.T. Act) has escaped assessment for the A.Y. 2014-15. In order to assess the above income which has escaped the assessment and also any other income chargeable to income tax, which has escaped the assessment and which comes to my notice subsequently in the course of the assessment proceedings under the provisions of section 147 of the Income Tax Act, 1961.*
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> *As the period involved is A.Y. 2014-15 and to issue notice u/s 148 of the Income Tax Act, 1961, necessary approval of your honour is required. In view of the above, the proposal is being sent to the Add. Commissioner of Income Tax, Range-1, Kanpur for according sanction to issue notice u/s. 148 of the I.T. Act, 1961 in this case for the A.Y. 2014-15."*

After recording the reasons a notice under Section 148 of the Act dated 27.4.2017 (wrongly mentioned by the petitioner as 24.4.2017) requiring the petitioner to submit its reply within a period of 15 days is issued.

In pursuance of the aforesaid notice the petitioner filed its return of income and has asked the statement of reasons recorded by the assessing authority. The assessing authority has supplied the reasons which are recorded by it for initiation of re-assessment proceedings. The said reasons are supplied to the petitioner on 10.6.2017. The claim of the petitioner before the assessing authority was that the Assessing

Authority has no jurisdiction for starting the impugned re-assessment proceedings over the petitioner under Section 147 of the Act and further that though the demised land was purchased in the name of present petitioner but in fact was purchased in the capacity of trustee/agent for one M/s Vidya Niketan Education Centre. The claim of the petitioner that on account of the aforesaid reasons being the "*Mantri/Prabandhak*" he had authority to execute the transaction in question.

The aforesaid objections are filed by the petitioner before the assessing authority on 23.2.2018. In his objection the petitioner has also submitted that the provisions of Section 56(2)(viiib) are not applicable. The petitioner has also contended that for the purpose of issuance of notice under Section 148 the permission has not been accorded by the competent authority therefore, the proceedings impugned are vide *ab initio*.

In para 13 of the writ petition the petitioner has stated as below :

> *"The petitioner is the General Secretary of M/s Vidya Niketan Education Center (respondent no.4) and is responsible for the overall administration and functioning of the Society."*

In para 14 of the writ petition the petitioner has stated that the trust, the respondent no.4 was in need of land for the purpose of establishing School and hence the petitioner was authorised to negotiate and purchase any suitable land to meet the requirement of Society.

According to petitioner being acting the powers vested in him by virtue of Board's resolution dated 20.4.2010, the petitioner, for and on behalf of and in the capacity of agent/trustee of the trust purchased certain immovable property for and on behalf of the society.

The assessing authority has dealt with the objection raised by the petitioner by disposing of the same dealing with all points which are raised by the petitioner in his objection. Regarding point no.8 raised by the petitioner in his objection the assessing authority has decided the same by observing as follows :

> *"On this point you have submitted that you are the Honorary Secretary of M/s Vidya Niketan Education*

> *Centre and for few other educational centres. Please state whether these aspects has disclosed to the Department, if yes when and how. Please justify these aspects with documentary evidences. You are also requested to file the copies of Audit Report, Balance Sheet, P & L Account along with all annexures and copy of ITR with computation for M/s Vidya Niketan Education Centre for the relevant period as well as for three succeeding years."*

The assessing authority after due consideration of the objections raised by the petitioner has properly disposed of the same and has requested the petitioner to make proper compliance to all the notices which are issued by him. The petitioner has been asked to furnish the information/details of the documents in pursuance of the notice issued under Section 142(1) dated 12.6.2017, a copy of the same is again enclosed by the assessing authority while dispose of the objections.

Learned counsel for the petitioner has submitted that vide order dated 19.7.2013 S.D.M./ Tehsildar has issued the requisite permission to the parties to carry out the conveyance of the demised property and consequently the sale deed was executed.

Counsel for the department has submitted that the facts of the present case clearly reveals that the property in question has been purchased by the petitioner himself and not by the trust or for the trust. He has further submitted that while filing the return for A.Y. 2014-15 the petitioner has not disclosed any material with regard to purchase of the property in question hence the assessing authority has rightly proceeded to initiate proceedings under Section 148 of the Act. He has further submitted that the writ petition is premature and since it is against show cause notice the same is liable to be dismissed.

He has further submitted that the petitioner may appear before the respondent authorities and establish its claim with regard to the source of investment and no prejudice is being caused to the petitioner at this stage. Prima facie, the case for reassessment with respect to escapement of income is clearly made out.

Sanction, in the present, has been granted by the Additional Commissioner as per section 151(2) of the I.T. Act. It is submitted that the Additional Commissioner is an authority highter in rank to the Joint

Commissioner. Even otherwise, it is submitted that the office of the Joint Commissioner was vacant and Additional Commissioner was holding charge of the office of Joint Commissioner and hence the permission/sanction has been granted by the Additional Commissioner in accordance with section 151(2) of the Act.

We have perused the sale deed, which has been executed and filed as Annexure-3 to the writ petition, which clearly indicates that the name of the purchaser or the property in question is mentioned as Chandra Mohan Triwari, S/o Bal Mukund Tiwari, who is the petitioner. We have further noticed that in coloumn 'stamp duty paid' the name of the petitioner is mentioned.

Similarly, the Deputy Registrar, Region 1, Kanpur Nagar has issued a certificate clearly mentioning therein the name of the purchaser and the address being, Chandar Mohand Tiwari, R/o H.No. 509, Safipur Pratham, Kanpur, which is the address of the petitioner in the instant writ petition also.

Similarly the order issued by the District Magistrate, Kanpur Nagar dated 28.10.2013 clearly indicates the name of the purchaser being the petitioner Chandra Mohan Tiwari. This order has been passed by the Collector, under Section 157 (1) of U.P.Z.A. & L.R. Act. For the ready reference the relevant contents of the aforesaid order dated 28.10.2013 are quoted hereinbelow :

> *अतः उपरोक्त विवेचना एवं तहसीलदार सदर की उक्त आख्या के आधार पर उ0 प्र0 जं0 विनाश एवं भूमि व्यवस्था अधिनियम 1950 की धारा-157(क) के अन्तर्गत आवेदक शिव प्रसाद पुत्र बंशीलाल निवासी-56 देवीगंज बगिया चकेरी व जिला कानपुर नगर को मौजा/ग्राम-चकेरी के खाता संख्या-495 के गाटा सं0-29 मि0 रकबा 0.1331 हे0 खाता सं0-217 तथा गाटा सं0-29 मि0, रकबा 0.2559 हे0 कुल रकबा 0.389 हे0 भूमि को गैर अनुसूचित जाति के क्रेता चन्द्र मोहन तिवारी पुत्र स्व0 बालमुकुन्द तिवारी निवासी-509 सफीपुर प्रथम कानपुर नगर को विक्रय करने की अनुमति प्रदान की जाती है। यदि भविष्य में उक्त भूमि के सम्बन्ध में कोई अन्यथा तथ्य प्रकाश में आता है तो यह अनुमति स्वतः ही निरस्त समझी जावेगी। इस आदेश की प्रति तहसीलदार सदर एवं सब रजिस्ट्रार को प्रेषित की जाये। वाद आवश्यक कार्यवाही पत्रावली दाखिल दफतर हो।*

We have also noticed that while passing the order under Section 9(1) of U.P. Revenue Code 2006, the petitioner has been shown as the purchaser of the property and no where it has been mentioned that the property has been purchased by the petitioner as a trustee/agent of the respondent no.4 trust.

Per contra, the counsel for the petitioner has submitted that the petitioner has filed the return of income as an individual capacity by disclosing the correct income. He has submitted that no property has been purchased by the petitioner as individual or for himself and in fact the property in question has been purchased for and on behalf of the trust of which the petitioner is a trustee/secretary general.

He has further submitted that without prejudice, there is no application of mind by the authority before granting sanction as required under law. There is no reason or application of mind.

We find no substance in the submission of the learned counsel for the petitioner as we have noticed from the documents which are enclosed by the petitioner in his writ petition clearly discloses that the property in question has been purchased solely by the petitioner himself and in his claim no documentary evidence has been produced by the petitioner which establishes that the petitioner has purchased the property for and on behalf of the trust. In the instant writ petition, the petitioner has nowhere stated that the said property is purchased by the trust and trust has disclosed the purchase of the property in its return for the A.Y. 2014-15. The assessing authority has reached to the conclusion by believing that income had escaped assessment.

Even during the course of arguments, counsel for the petitioner has argued that the assessment should be made in the hands of the society and only provisional assessment could be made in the hands of the petitioner. It is submitted that section 147 of the Act is applicable where any income chargeable to tax has escaped assessment and the power is given to the assessing officer, to both assess or reassess under Section 147. Thus, in the reassessment proceedings, if proper evidence is furnished by the petitioner, only then it could be adjudged as to whether the income liable to be taxed in the hands of the petitioner has escaped assessment, or not, which cannot be adjudicated in the writ petition.

Without going into the merit of the case *prima facie* we are satisfied with the initiation of the proceedings by the assessing authority and we are further of the opinion that at this stage the petitioner cannot succeed as the material and evidence which are adduced by the petitioner are clearly disclosing that the petitioner has effected the purchase of property in his name. However, without going into the merits of the case we dismiss the writ petition with liberty to the petitioner to raise his grievance before the competent authority. It would be open to the petitioner to adduce whatever evidence or documents as he may rely in support his contention.

The writ petition is accordingly dismissed.

Order Date :- 02.05.2018
S.S.

(Ashok Kumar, J.) **(Krishna Murari, J.)**