



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 12393 OF 2024 (T-IT)

BETWEEN:

MASSOOD GULAM
S/O LATE GULAM MOHAMMED
AGED ABOUT 45 YEARS
R/AT RPL HOSALINE ROAD,
ALUR, HASSAN , KARNATAKA 573201
HAVING OFFICE ADDRESS AT:
HAZRATH TIPPU SULTAN EXPORTS
SHOP NO.4, APMC YARD, HASSAN
KARNATAKA.
PAN BDEPG3161L

...PETITIONER

(BY SRI. BALRAM R RAO.,ADVOCATE)

AND:

INCOME TAX OFFICER
WARD NO. 1 AND TPS
AAYAKAR BHAVAN, 2ND STAGE, BELUR ROAD,
HASSAN, KARNATAKA 573 201.

...RESPONDENT

(BY SRI. M. THIRUMALLESH., ADVOCATE)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA CALLING FOR THE RECORDS OF THE PETITIONERS CASE AND AFTER EXAMINING THE LEGALITY AND VALIDITY THEREOF BE PLEASED TO QUASH AND SET ASIDE THE IMPUGNED ORDER PASSED UNDER CLAUSE (D) OF SECTION 148A OF THE ACT DATED 29/03/2023 IN DIN AND NOTICE NO. ITBA/AST/F/148A/2022-23/1051601516(1) (ANNEXURE-B) AS WELL AS NOTICE ISSUED UNDER SECTION 148 OF THE ACT DT. 29/03/2023 IN DIN





AND NOTICE NO. ITBA/AST/S/148.1/2022-23/1051602049(1) (ANNEXURE-C) PASSED BY THE RESPONDENT FOR THE ASSESSMENT YEAR 2019/20 AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks for the following reliefs:-

"i. Issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof be pleased to quash and set aside the impugned order passed under clause (d) of section 148A of the Act dated: 29.03.2023 in DIN & Notice No: ITBA/AST/F/148A/2022-23/ 1051601615(1) [ANNEXURE-B] as well as notice issued under section 148 of the Act dt. 29.03.2023 in DIN & Notice No.ITBA/AST/S/148_1/2022-23/ 1051602049(1) [ANNEXURE-C] passed by the Respondent for the Assessment Year 2019-2020, and

ii. Issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof be pleased to quash and set aside the impugned order passed under section 147 r.w.s. 144 of the Act dated: 24.03.2024 in DIN & Order No:



*ITBA/AST/S/147/2023-24/1063299697(1) [ANNEXURE-J]
for the Assessment year 2019-2020 passed by the
Respondent,*

*iii. A Writ of Mandamus or a writ in the nature of
Mandamus, or any other appropriate Writ, Order or
Direction under Article 226 of the Constitution of India
ordering and directing the Respondents by themselves,
their subordinate, servants and agents to withdraw and
cancel the impugned order passed under section 147 r.w.s
144 of the Act dated: 24.03.2024 in DIN & Order No:
ITBA/AST/S/147/2023-24/1063299697(1) [ANNEXURE-J]
for the Assessment year 2019-2020 passed by the
Respondent and*

*iv. A writ of Prohibition or a writ in the nature of
Prohibition or any other appropriate writ, order or direction
under Article 226 of the constitution of India prohibiting and
restraining the Respondents by themselves, their
subordinate, servants and agents from taking any action in
furtherance or consequent to the impugned order passed
under Section 147 r.w.s. 144 of the Act dated: 24.03.2024 in
DIN & Order No: ITBA/AST/S/147/2023-24/1063299697(1)
[ANNEXURE-J] for the Assessment year 2019-2020 passed
by the Respondent and*

*v. Grant the interim relief in terms of prayer (iii)
above, and*

*vi. Issue such other order, writ or direction as this
Hon'ble Court deems fit; and*

*vi. Direct the Respondents to pay the costs of this
Writ Petition.”*



2. Heard learned counsel for the petitioner and learned counsel for the respondent-revenue and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner invites my attention to the impugned Notice dated 21.03.2023 issued under Section 148A(b) of the Income Tax Act (for short, 'the I.T Act') in order to point out that the said notice issued by the respondent to the petitioner for the Assessment Year 2019-20 calling upon the petitioner to submit his response / reply within a period of six days is contrary to the prescribed period of seven days as contemplated under Section 148A(b) of the I.T Act, which is illegal, invalid and inoperative and no proceedings pursuant thereto could have been taken by the respondent and the same deserve to be quashed and as such, the said notice as well as all subsequent proceedings including assessment order issued under Section 148A(b) notices, etc., deserve to be quashed. It is submitted that despite the aforesaid facts and circumstances, the respondent proceeded to pass the impugned assessment order dated 24.03.2024, which deserves to be quashed.



4. Per contra, learned counsel for the respondent would support the impugned order, notices, etc., and submit that there is no merit in the petition and that the same is liable to be dismissed.

5. The material on record will indicate that having regard to the minimum period of seven days prescribed under Section 148A(b) of the I.T Act as held by the High Court of Bombay in the case of ***Mukesh J. Ruparel Vs. Income Tax Officer, Ward 27(2)(1) – W.P.No.15268/2023 dated 25.07.2023***, that if the notice under Section 148A(b) prescribes a period lesser than a period of seven days as contemplated in the said provision, the said notice would be vitiated resulting in quashment of not only the notice but also the subsequent assessment orders, penalty notices, orders, etc. In the aforesaid judgment of the Bombay High Court, it is held as under:

“Petitioner is impugning a notice dated 15th March 2023 issued under Section 148A(b) of the Income Tax Act, 1961 (the Act), the order dated 31st March 2023 passed under Section 148-A(d) of the Act and notice dated 31st March 2023 issued under Section 148 of the Act.

2. Petitioner is an individual who did not file return of income for Assessment Year 2016-17 because his income was less than taxable limit.

3. Petitioner received a notice dated 15th March 2023 under Clause 148A(b) of the Act from Respondent No.1, stating that Respondent No.1 has information which suggests that income chargeable to tax for Assessment Year



2016-17 has escaped assessment within the meaning of Section 147 of the Act. Petitioner was provided with information / enquiry on which reliance was placed in the form of annexure to the notice and Petitioner was called upon to show cause on or before 28th March 2023 as to why a notice under Section 148 of the Act should not be issued. The information which suggested that there has been an escapement of income from assessment provided details of a property that Petitioner had purchased. Petitioner was directed to provide head-wise computation of income, details of purchase of immovable property during Financial Year 2015-16 supported with copy of registered agreement with annexure II, details of payment made and source of acquisition of said immovable property.

4. Petitioner submitted an elaborate reply on 18th March 2023 and also raised certain objections. The main objection raised was that under the provision of Section 148A(b) of the Act, the assessee should be provided an opportunity of being heard by serving upon the assessee a notice to show cause within such time as may be specified in the notice being not less than seven days but not exceeding thirty days from the date on which said notice has been issued. Since the notice dated 15th March 2023 provides only for five days when the law requires minimum seven days to be given, the notice itself was bad-in-law.

5. Along with reply, Petitioner also provided a photo copy of the notarised affidavit of Petitioner's brother affirmed on 18th March 2023, in which the brother has confirmed of giving gift of Rs.75 lakhs to Petitioner on 26th March 2019, which is much beyond the relevant Assessment Year.

6. Respondent No.1 has passed the impugned order dated 31st March 2023 under Clause D of Section 148A of the Act. In the order, Respondent No.1 states that from the statement issued by HDFC Bank for the period 1st April 2018 to 31st March 2019 of the brother, it is seen that there is a credit entry of Rs.1 Crore on 19th March 2019, out of which Rs.75 lakhs has been paid to Petitioner on 26th March 2019. Respondent No.1 also states that the gift deed submitted by Petitioner from the brother has not been notarised.

7. Moreover, Respondent No.1 states that income chargeable to tax has escaped assessment without mentioning what is the amount of income that has escaped



assessment. Further, the approval under Section 151 of the Act which is annexed to the impugned order is of one Poonam Vijay Chhabria whose PAN number is also entirely different from the PAN number of Petitioner. Respondent No.1 is totally silent about the objections raised by Petitioner of minimum seven days notice required. Mr. Gandhi states that on each of these grounds not only the impugned order dated 31st March 2023 but also the notice dated 31st March 2023 itself should be quashed and set aside.

8. No reply has been filed though Petition was served more than a month ago. We have, therefore, decided to go ahead and consider the matter and dispose it since we were, prima facie, satisfied that there was merit in Petitioner's submissions.

Section 148-A(B) of the Act reads as under:-

"provide an opportunity of being heard to the assessee, 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)."

9. The notice dated 15th March 2023 gives time only up to 20th March 2023 to show cause. We have to note that even the guidelines dated 1st August 2022 for issuing of notice under Section 148 of the Act also provide that if the result of an enquiry / information available suggests that income chargeable to tax has escaped assessment, the Assessing Officer shall provide an opportunity of being heard by assessee by issuing the show cause notice under Section 148A(b) of the Act and the notice shall provide between seven to thirty days time for the assessee to submit their reply. A template of the show cause notice is also annexed to the guidelines. Therefore, in view of the guidelines, we would also read that the minimum seven days required to be made as a mandatory requirement and failure to comply with



would render a notice itself invalid. Therefore, on this ground alone, the notice requires to be quashed and set aside.

Perhaps, being aware of this position, Respondent No.1 has chosen not to deal with these objections raised by Petitioner in the reply to the show cause notice.

10. We also found in the said guidelines a provision that the order under Section 148A(d) of the Act shall be sent to assessee along with the approval of the specified authority for such order under Section 148A(d) of the Act. In the case at hand, the approval that has been sent is of some other assessee and not Petitioner. This also indicates non-application of mind by Respondent No.1. On this ground also, the order dated 31st March 2023 impugned in the Petition is required to be quashed and set aside.

11. Further, in the guidelines to which is annexed a template of the order to be passed under Section 148A(d) of the Act provides for mentioning of amount escaped based on the information and how this amount is represented in the form of assets. It also provides that the Assessing Officer will specify the quantum of income / assets / expenditure / entry which has escaped assessment. This not stated in the order under Clause D of Section 148 of the Act. On this ground also, the said order dated 31st March 2023 is required to be quashed and set aside.

12. Further, there is a factually incorrect statement made in the order that the affidavit of Petitioner's brother that was submitted was not notarised when it was factually a notarised affidavit.

13. Further, in the impugned order, it is stated that the HDFC statement / document do not substantiate the credit worthiness and genuineness of the lender of the gift, i.e., brother of Petitioner.

Mr. Gandhi states that if only Petitioner was called upon to submit, Petitioner would have submitted evidence towards credit worthiness of the brother because in the show cause notice issued, Petitioner was only directed to call upon to disclose the source from which he got money to pay for the flat.

In over view, therefore, on this ground also, the impugned order dated 31st March 2023 is required to be quashed and set aside.



14. Accordingly, we hereby quash and set aside the notice dated 15th March 2023 issued under clause (b) of Section 148-A of the Act, the impugned order dated 31st March 2023 issued under clause (d) of Section 148A of the Act and consequent notice dated 31st March 2023 issued under Section 148 of the Act.

15. Petition disposed. There shall be no order as to costs.”

6. In the instant case, it is an undisputed fact that the Notice at Annexure – A dated 21.03.2023 prescribes a period of six days, which is lesser than the minimum prescribed period of seven days as contemplated under Section 148A(b) of the IT Act. Under these circumstances, in the light of the judgment of the Bombay High Court in **Mukesh’s** case supra, I am of the considered opinion that the Notice at Annexure – A and also consequential proceedings, orders, notices, etc., deserve to be quashed by reserving liberty in favour of the respondent to take recourse to such remedies as available in law.

7. In the result, I pass the following:

ORDER

(i) The petition is hereby **allowed**.

(ii) The impugned Notice at Annexure-A dated 21.03.2023; the impugned order at Annexure–B dated 29.03.2023;



impugned Notice at Annexure – C dated 29.03.2023 and the impugned assessment order at Annexure-J dated 24.03.2024 are hereby quashed.

(iii) Liberty is reserved in favour of the respondent to initiate proceedings against the petitioner subject to all just exceptions, in accordance with law.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

Srl.