

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

RESERVED ON: 14.08.2023
DELIVERED ON: 30.08.2023

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**A.P.O.T NO. 187 OF 2023
(I.A. NO. G.A./01/2023)**

**SHRI SHYAM SUNDAR DHANUKA
VERSUS
UNION OF INDIA AND OTHERS**

Appearance:-

**Mr. Abhrotosh Majumder, Sr. Adv.
Mr. Sourav Bagaria, Adv.
Mr. Arup Nath Bhattacharya, Adv.
Mr. Arya Bhattacharya, Adv.**

....for the Appellant.

**Mr. Tilak Mitra, Adv.
Mr. Amit Sharma, Adv.**

.....for the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This intra court appeal by the writ petitioner is directed against the order dated 08.05.2023 in WPO No. 929 of 2023. The appellant filed the said writ petition challenging the order passed by the first respondent under Section 148A(d) of the Income Tax Act, 1961 (the Act) dated 07.04.2023 and the consequential notice issued under Section 148 of the Act. The learned Single Bench by the impugned order rejected the contention of the appellant that the assessing officer has not proceeded merely on the basis of remarks “potential borrowers/lenders” as in the later part of the order the assessing officer has clarified that on verification of the documents, he has found credible evidence of actual borrowings done by the appellant and not “potential” in nature. Further the learned Single Bench held that the assessing officer has held that the appellant assessee has availed cash loan to the tune of Rs. 40,70,00,000/- through finance broker Kaseras, other different lenders and it has also been recorded. There is huge unexplained expenditure within the meaning of Section 69C of the Act and that the cash loan and repayment in cash comes within the crux of the provisions of Section 269SS and Section 269T and other relevant provisions of the Act. Further the learned Single Bench observed that on perusal of the order impugned in the writ petition, it is evident that it was based on huge materials and evidence regarding the alleged transaction and the court in exercise of its writ jurisdiction cannot act as an assessing officer and scrutinize those facts and evidence and substitute the some with its own opinion. Further the learned writ court held that the order impugned before

it is neither a non-speaking order nor there has been any violation of the principles of natural justice nor there is any procedural irregularities nor it can be stated that the assessing officer lacked inherent jurisdiction. On the other hand, the order being based on facts, findings and materials evidence cannot be interfered in a writ petition. With the above findings, the learned writ court held that there was no scope for interfering with the order passed under Section 148A(d) of the Act.

2. Mr. Abhratosh Majumder, learned senior advocate assisted by Mr. Sourav Bagaria, learned advocate appearing for the appellant submitted that the assessing officer had not provided the reasons recorded/information which was the basis for initiating proceedings and in particular that such reasons or information must have same rational nexus or live-link with the formation of belief that income of the appellant has escaped assessment. It is submitted that the assessing officer though has made an observation that upon verification of the documents and the credible evidence, the appellant has availed cash loan of Rs. 40,70,00,000/- through Uma Shankar Kasera, the learned writ court failed to take into consideration that no such document was furnished to the appellant. Further it is submitted that as per the statutory scheme of Section 148 of the Act and inclusion of clause (a), it specifically provides for conducting inquiry before issuance of the notice under Section 148A(b) and that inquiry/investigation must precede the issuance of notice under Section 148 of the Act. Further it is submitted that the assessing officer without any independent application of mind and without verification had come to the conclusion that the income of the appellant has escaped assessment. Further it is submitted that the

reassessment initiated relying on the report of the investigation wing is bad in law as was held by this Court in the case of ***Girdhar Gopal Dalmia Versus Union of India and Others*** in ***MAT No. 1757 of 2022*** dated 24.11.2022. It is further submitted that the order impugned in the writ petition was passed without considering and/or dealing with the contention raised by the appellant in the reply dated March 16, 2023 and March 25, 2023 in response to the notice issued under Section 148A(b) of the Act dated March 03, 2023, March 14, 2023. The order passed under Section 148A(d) dated April 07, 2023 was passed in gross violation of the principles of natural justice and therefore was liable to be set aside. On the above grounds, the learned senior advocate sought for setting aside the order passed in the writ petition and consequently to set aside the reopening proceedings.

3. Mr. Tilak Mitra, learned senior standing counsel appearing along with Mr. Amit Sharma, learned junior standing counsel for the department submitted that the learned writ court after considering the factual position rightly held that the disputed questions of fact which was canvassed before it cannot be adjudicated in the writ petition and that there was sufficient evidence brought on record by the assessing officer while passing the order under Section 148A(d) of the Act and it will be well open to the appellant to agitate all the issues during the reopening proceedings, by placing documents and evidence in support of the claim and that the writ petition was rightly dismissed.
4. We have elaborately heard the learned advocates for the parties and carefully perused the materials placed on record.

5. The respondent assessing officer issued notice under clause (b) of Section 148A dated March 14, 2023 stating that he has information which suggests that income chargeable to tax for the assessment year 2016-2017 has escaped assessment within the meaning of Section 147 of the Act. The details of the information/inquiry conducted on which reliance was placed by the department, along with supporting documents were enclosed along with the notice dated March 14, 2023. The appellant was directed to show cause as to why in view of the details contained in the enclosure, notice under Section 148 of the Act should not be issued. The appellant was required to submit a reply along with supporting documents not later than March 29, 2023.
6. In the annexure to the said show cause notice, it has been stated that information was available in the case of the appellant for the assessment year 2016-2017 in the verification module of Insight Portal under the category "Dissemination of certain High Risk CRIU/VRU PAN case and High Risk CRIU/VRU Non PAN Cases" pertaining to the assessment year 2016-2017 on Insight Portal selected under Risk Management Strategy (RMS) cycle-(ii) vide proceedings dated February 20, 2023. It is stated that information available with the assessing officer was analyzed and duly verified with various portals namely Financial Transactions (SFT), TDS/TCS Statement, CBIC Data, Form 15CC, Form 61, etc. as well as the overall profile of the appellant based on the information available in the data which was analyzed and verified. The assessing officer would state that the information in the case of the appellant shows that there is potential tax liability for the financial year 2015-2016 relevant to the assessment year

2016-2017. Search and survey action under Section 132 of the Act conducted at various spots of finance brokers Sanvaria and Kasera on November 30, 2018 and the appellant assessee was beneficiary of the said finance broker and has received a cash loan of Rs. 40, 70,00,000/- during the assessment year under consideration. Therefore the assessee was directed to furnish his explanation in the matter along with clarification/information sought for from the assessee by the assessing officer which are as follows:-

- ❖ *Please mention details of that person and the nature of your financial transaction with that entity. Please furnish its name and current address and whether said money paid back to such entity in anytime in future.*
- ❖ *Please furnish all evidence/details to establish the identity, creditworthiness and genuineness of this transaction. In order to establish the creditworthiness, you are requested to explain the immediate source of funds out of which money had been transferred to you.*
- ❖ *Please explain how such amount has been utilized by you after its receipt. If the money has been transferred to some other entity thereafter, mention the name of that person, the reasons, for such payment and its present address with all supporting documents.*
- ❖ *Please furnish names and addresses of the Directors of your company who were holding that position at the time of receipt of such money.*
- ❖ *Please furnish statement of your Bank A/c, for the relevant period showing receipts of such money and its subsequent transfer, if applicable.*

7. The appellant was directed to explain as to why notice under Section 148 of the Act should not be issued in his case to reopen the assessment for the relevant year on the basis of adverse information received against the appellant. Along with the notice, the copy of the report of the Deputy Director of Income Tax Investigation Unit 2, (IV) Kolkata dated 15.11.2022

was enclosed wherein there is a reference to the statement recorded from the said Kaseras and to other documents which were seized during the search and seizure operations. The assessee submitted his reply on March 16, 2023 stating that on perusal of the statement given by the Uma Shankar Kasera, it is seen that there is no mention of the assessee's name in the said statement and therefore it cannot be inferred that the assessee has given cash loan. Further it was stated that the statement of Praveen Kumar Kasera was not furnished to the appellant and therefore proper opportunity was not granted. Further it was stated that along with the show cause notice, the letter from the Deputy Director of Income Tax (Investigation) dated 15.11.2022 was enclosed wherein modus operandi of unaccounted cash loan transaction is discussed, however, the assessee fails to understand as to how these letters led to an inference that the assessee has given cash loans. Therefore the assessee demanded that evidence available with the department on the basis of which they have alleged that the assessee had received/lent cash loan of Rs. 40.70 crores is required to be furnished to give opportunity to the appellant to rebut the said allegations. Further it was contended that no inquiry was conducted in terms of clause (a) of Section 148A of the Act which is a pre-cursor before initiating proceedings under Section 147 of the Act. The appellant referred to CBDT instructions dated 22.08.2022 on the subject regarding uploading of data and functionalities/portal of the income tax department wherein there is an observation that the information made available/data uploaded by the reporting entities may not be fully accurate due to human error technical

nature etc. With the above submissions, the assessee requested to drop the reopening proceedings.

8. After considering the reply given by the assessee, the assessing officer by order dated April 07, 2023 passed an order under clause (d) of Section 148A of the Act. After setting out the statutory provisions, it is stated that investigation report received from the office of the DDIT (investigation) shows that there are some remarks about potential borrowers/lenders and on verification of the documents, it is seen that there are credible evidence of actual borrowings which are not potential in nature but suggest the fact of actual transaction. Further after examining and analyzing the information available on record and the data reported in the Insight Portal copy of which was shared with the assessee along with the show cause notice, the assessing officer holds that it is evident that the assessee has availed cash loan to the tune of Rs. 40.70 crores through the finance broker Kaseras from different lenders such as Uma Shankar Kasera and the said amount falls in the ambit of the case where any amount is borrowed only on or any amount thereon is repaid to, any person otherwise then through an account payee cheque drawn from a bank, the amount so borrowed or repaid shall be deemed to be income of the person borrowing and repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be and the income generated from the application of the loan so taken as unexplained income.
9. Further the assessing officer pointed out that payment of interest on cash loan falls within the ambit of unexplained expenditure within the meaning of Section 69C of the Act. Further as regards, the cash amount and

repayment of the same in cash, the relevant provisions which will stand attracted are Section 269SS and 269D apart from the provision for imposing penalty under Section 271D, 271DA are attracted. Further it has been stated that on examination of seized documents marked as USK/6 found and seized from the residential premises of finance broker Praveen Kumar Kasera in Kolkata wherein there is a recording identifying the assessee as a borrower and that he has taken cash loan to the tune of Rs. 40,70,00,000/- during the financial year 2015-2016. Further it is stated that in the seized documents, the finance broker Kasera used geometrical pattern/figure to represent the loan amount in unaccounted cash loan account. Further Kasera were using a unique disable method of coding the amount of transaction. The primary basis of decoding of geometrical figure which when confined to the documents containing geometrical figures corresponds with rukkus. It has been further stated that after decoding the geometrical figures, the exact amount of loan has been ascertained. Further it is stated that using geometrical figure to represent the amount of cash loan has been admitted by the Uma Shankar Kasera in his statement recorded on 30.11.2018. Further it is stated that the assessee's name is appearing in several of the seized documents which show that cash loan were availed/received from different lenders through finance brokers and the assessee availed/received cash loan in his own name and also in the name of group company. The relevant details were set out in a tabulated form and made part of the order passed in the clause (d) of Section 148A of the Act. Further it is stated that from the seized documents it is found that the entries of data name of lender group and name of borrowers namely the

appellant assessee were entered in the exercise book. There is reference to search conducted by the department on other persons who are also part of the Kasera group and ultimately the assessing officer held that the name of the assessee appears in the seized documents having borrowed Rs. 40,70,00,000/- on a "rukka" and the amount so borrowed is deemed to be income of the assessee and the interest paid by the assessee to the lender is deemed to be unexplained expenditure and the income generated from the application of the loan so taken as unexplained income.

10. Thus, the assessing officer concluded that the said sum of Rs. 40,70,00,000/- has escaped assessment and he is satisfied that issuance of notice under Section 148 of the Act is required. Pursuant thereto notice under Section 148 dated April 07, 2023 has also been issued.

11. In the light of the findings recorded by the assessing officer, it cannot be stated that the order passed under clause (d) of Section 148 is a non-speaking order nor the order to be branded as outcome of non-application of mind. To test the correctness of the order, it is necessary that the disputed question of facts have to be thoroughly analyzed. There are several stake holders in the entire process which requires deeper probe into the matter and such an exercise cannot be done in exercise of writ jurisdiction. Therefore, the learned single bench was fully justified in not entertaining the writ petition and leaving it upon to the appellant to agitate all issues in the reopening proceedings for which notice under Section 148 has been issued on April 07, 2023.

12. In the result, the appellant has not made out any case for interference with the order passed by the learned single bench. Accordingly, the appeal fails and the same is dismissed. No costs.

(T.S. SIVAGNANAM, C.J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- SACHIN)

