



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 6475/2024

Agarwal Polysacks Limited, (P.A.N. Number AABCA1578R), through its Director Amritanjali Agarwal Jain, age 38 years, company with its registered office at E-649, M.I.A., IInd Phase, Basni, Jodhpur - 342005 (Raj.).

-----Petitioner

Versus

1. Principal Commissioner Of Income Tax-I, Aaykar Bhawan, Paota C Road, Circle-3, Jodhpur.
2. Deputy Commissioner Of Income Tax, Aaykar Bhawan, Paota C Road, Circle-3, Jodhpur.
3. Assistant Director Of Income Tax, Aaykar Bhawan, Paota C Road, Circle-3, Jodhpur.
4. Additional Director Of Income Tax (Inv)-Ii, Aaykar Bhawan, Paota C Road, Circle-3, Jodhpur.

-----Respondents

For Petitioner(s) : Mr. Ankur Mathur
Ms. Shreshtha Mathur
For Respondent(s) : Mr. Sunil Bhandari

**HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE KULDEEP MATHUR**

Order

18/07/2024

Per, Hon'ble Shree Chandrashekhar, J :

Challenging the order dated 5th April 2024 and, in turn, the notice dated 28th March 2024, Agarwal Polysacks Limited has approached this Court.

2. The petitioner-company was issued a notice on 28th March 2024 intimating that the information in possession of the Revenue suggests that income chargeable to tax for the assessment year



2020-21 escaped assessment within the meaning of section 147 of the Income Tax Act 1961. Along with this notice under section 148A, the documents in possession of the Revenue were supplied to the petitioner-company. But before that, on the basis of the verification details an inquiry was conducted and opportunity was provided to the petitioner-company to furnish its explanation. The inquiry report referred to 13 plots sold during the assessment year 2020-21 (F.Y. 2019-20) the considerations for which are said to have been received in cash. The inquiry report further recorded that 13 plots in Shri Shiv Nagar Daizar, Jodhpur were sold to different individuals and the sale deeds were registered between 18th September 2019 to 14th October 2019. The relevant portions of the inquiry report at page 117 of the paper book are reproduced hereinbelow :-

"Investigation in the matter of M/s Agarwal Polysacks Limited was pending with the undersigned.

2. It was seen that M/s Agarwal Polysacks Limited sold 13 plots in Shri Shiv Nagar, Daizar, Jodhpur during F.Yr. 2019-20 as per details submitted below. All these plots were sold in cash.

Sr. No.	Plot Number	Name of Purchaser	Sale Consideration	DLC Rate	Date of registry
1	49	Smt. Premlata	Rs. 2,60,000/-	Rs. 4,50,000/-	19.09.2019
2	21	Smt. Priyanka Kanwar	Rs. 2,60,000/-	Rs. 5,40,000/-	18.09.2019
3	48	Smt. Sita Devi	Rs. 2,60,000/-	Rs. 5,94,000/-	19.09.2019
4	74	Smt. Sonu	Rs. 1,80,000/-	Rs. 4,12,500/-	19.09.2019
5	118	Smt. Suman Kanwar	Rs. 1,80,000/-	Rs. 4,12,500/-	20.09.2019
6	90	Shri Jabbar Singh	Rs. 1,80,000/-	Rs. 3,12,500/-	10.09.2019
7	77	Shri Mohanram	Rs. 1,80,000/-	Rs. 3,12,500/-	18.09.2019
8	56	Smt. Mohan Kanwar	Rs. 2,60,000/-	Rs. 5,94,000/-	14.10.2019
9	2	Smt. Seema Kanwar	Rs. 2,00,000/-	Rs. 3,63,112/-	20.09.2019
10	89	Shri Rawal Singh	Rs. 1,80,000/-	Rs. 3,12,500/-	10.10.2019
11	18	Shri Parsa Ram Parihar	Rs. 1,95,000/-	Rs. 4,50,000/-	17.10.2019
12	20	Smt. Gulab Kanwar	Rs. 2,60,000/-	Rs. 5,94,000/-	18.09.2019
13	147	Smt. Sanju Kanwar	Rs. 1,80,000/-	Rs. 4,12,500/-	18.09.2019

Opportunity was provided to the assessee company to furnish an explanation in this regard but no explanation has been furnished till date. Therefore, the inquiry report is being prepared





on the basis of information and documents available with this office. Therefore, the sales consideration of Rs.57,60,112/- received by M/s Agarwal Polysacks Limited for sale of aforementioned plots remain unexplained. Therefore, addition of Rs.57,60,112/- is proposed to be made in the income of M/s Agarwal Polysacks Limited."

3. Mr. Ankur Mathur, the learned counsel for the petitioner-company has raised two-fold contentions, namely, (i) no opportunity of hearing was given to the petitioner-company and (ii) the reply furnished by the petitioner-company was not at all considered while arriving at a conclusion that the amount of Rs.57,60,112/- allegedly received in cash is required to be reassessed. In support of his submissions, the learned counsel for the petitioner-company referred the judgments in "P.G.O. Processors Private Limited vs Commissioner, C. Ex." decided on 24th January 2000, "Red Chilli International Sales vs. Income Tax Officer & Anr." reported in 2023 Live Law (SC) 16 and "Chotanagpur Diocesson Trust Asson. Vs. Union of India" reported in [2023] 156 taxmann.com 273 (Jharkhand). Per contra, the learned counsel for the Revenue contended that at the stage of issuing notice under section 148A(b), the IT Act contemplates a limited inquiry to ascertain the existence of information(s) that may suggest that the income chargeable to tax has escaped assessment and the assessee then is given opportunity to raise his defence during the assessment proceedings and therefore no prejudice has been caused to the petitioner-company. The learned counsel for the Revenue has also referred to the decision "M/s Chetak Enterprises Ltd. Vs. The Assistant Commissioner of Income Tax" rendered by a Division Bench of this Court in



D.B. Civil Writ Petition No.7062 of 2022 and submits that the issue raised by the petitioner-company stands conclusively decided by this Court.

4. The requirement of natural justice that is to say providing an opportunity of hearing does not mean that the assessee should be given personal hearing. The words employed under section 148A(b) indicate that the assessee should be afforded an opportunity of being heard by way of show cause notice and a personal hearing in any form is not contemplated thereunder. This is not in dispute that in response to the show cause notice dated 28th March 2024 the petitioner-company submitted its reply on 3rd April 2024 a reference of which we find in the order dated 5th April 2024 at page 128 of the paper book. As to the plea that there is no consideration of the stand taken by the petitioner-company in the order dated 5th April 2024 by the ACIT, Circle-3, we may indicate that in a quasi-judicial proceeding it is not necessary that at the interlocutory stage the statutory authority must reflect to every stand of the assessee and record his considerations point-wise. Even then, we think that there is sufficient consideration of the defence set up by the petitioner-company in the order dated 5th April 2024 the relevant portions of which are reproduced below:

"4. *Reply of the assessee:*

In compliance to the Show Cause Notice, the assessee e-filed its reply dated 03.04.2024, as per para-3, it is admitted that assessee company is owner of agricultural land measuring 43 Bigha and 6 Biswa located at Khasra No.33 and 34, Daijer, Manaklao, Jodhpur, which was purchased in year 2008 and mainly submitted that in March 2019 the Company authorized it's Director Mrs. Manju Agrawal to take a decision about the land thereafter on 07.06.2019 a Power of Authority (Aam Mukhtiyarnama) was issued by authorized director of the assessee company





Mrs. Manju Agrawal in favor of Mr. Kamlesh Kumar Deora S/o Sh. Ram Prasad Deora r/o-Phoolbagh, Mandore, Jodhpur having PAN:AFSPD5795A and assessee company is neither aware of plots sold nor receive any consideration from sale of plots as allegedly sold by the power of attorney holder during the year under consideration. The assessee also mentioned that a civil suit filed against the assessee company & Sh. Kamlesh Kumar Deora by Sh. Aditya Singhvi & others on 21.06.2019 in connection with same piece of land at District Court Jodhpur.

5. Analysis of assessee's reply & finding of this office:

The reply of the assessee was perused and not found acceptable due to the fact that as per the information available with the department the assessee has sold the plots and received the consideration in cash ; DLC value of sold plots were Rs.57,60,112 during financial year 2019-20. As per the reply the plots were sold by Mr. Kamlesh Kumar Deora S/o Sh. Ram Prasad Deora, who was holder of power of attorney (Aam Mukhtiyarnama) notarized dated 07.06.2019 and all sale deeds were found registered at Sub Registrar-III, Jodhpur.

The reply of the assessee is not acceptable as per the discussion above. The assessee has failed to provide satisfactory reply alongwith documentary evidences to the show cause notice. The documentary evidences available with the department suggests that income chargeable to tax has escaped assessment within the meaning of section 147 of the Income-tax Act.

In this regard it is stated that as per the requirement of section 148A, the department has to be in possession of information suggesting escapement of income which as per explanation 1 to section 148 means any information in accordance with Risk Management Strategy formulated by Board. "It is pertinent to mention here that the only pre-requisite for issuance of notice under section 148, is information which suggest escapement of income and in this case information has been flagged through High Risk CRIU/VRU of Insight Portal that income of Rs. 57,60,112/- has escaped assessment as assessee has sold plots in cash and income not offered for taxation.

6. Conclusion:

The reply alongwith explanation/documents submitted by the assessee have been perused and duly considered as discussed above. The assessee has failed to furnish satisfactory explanation with proper supporting documents/ evidences to substantiate his claim/contention and hence the same cannot be acceptable.

6.1 From the above facts and discussion, it is clear that the income of Rs.57,60,112/- has escaped assessment





during the year under consideration and requires to be brought to tax.

6.2. In view of the above, on the basis of material available on record including reply/compliance of the assessee and as per clause (d) of Section 148A of the Income-tax Act, 1981, I hereby hold that in the case of the assessee income needs to be assessed/re-assessed and is found to be a fit case for issuance of notice under Section 148 of the Income Tax Act, 1961. Thus, in this case, three years have not elapsed from the end of the relevant AY i.e. 2020-21 as required u/s 149(1)(a) of the Income Tax Act, 1961 and as such this is a fit case for issue of notice with the approval of the specified authority i.e. Principal Commissioner of Income-tax-1 Jodhpur as per section 151 (I) of the Income-tax Act, 1961. Accordingly this order is being passed as per clause (d) of Section 148A of the Income-tax Act, 1961, after obtaining prior approval of the Specified Authority i.e PCIT-1, Jodhpur.”

5. By now this is quite a well-settled proposition that the natural justice is not a mere artifact and cannot fit into any rigid mould. The Court is required to see whether the decision maker has taken a fair decision and if that is so the form and features of the order complained against may not be of much relevance. Therefore, unrealistic expansion of the rules of natural justice and that too without reference to the administrative realities and other factors of a given case can produce undesired results. In “Competition Commission of India Vs. Steel Authority of India Ltd. & Anr.” (2010) 10 SCC 744, the Hon’ble Supreme Court held as under:-

85. Wherever, this Court has dealt with the matters relating to complaint of violation of principles of natural justice, it has always kept in mind the extent to which such principles should apply. The application, therefore, would depend upon the nature of the duty to be performed by the authority under the statute. Decision in this regard is, in fact, panacea to the rival contentions which may be raised by the parties in a given case. Reference can be made to the judgment of this Court in the case of *Canara Bank vs. Debasis Das*.

86. We may also notice that the scope of duty cast upon the authority or a body and the nature of the function to be





performed cannot be rendered nugatory by imposition of unnecessary directions or impediments which are not postulated in the plain language of the section itself. 'Natural justice' is a term, which may have different connotation and dimension depending upon the facts of the case, while keeping in view, the provisions of the law applicable. It is not a codified concept, but are well defined principles enunciated by the Courts. Every quasi judicial order would require the concerned authority to act in conformity with these principles as well as ensure that the indicated legislative object is achieved. Exercise of power should be fair and free of arbitrariness.

6. We would therefore refer to the statutory scheme of the "Procedure for Assessment" under Chapter XIV of the IT Act, 1961. Section 147 of the IT Act provides that in case where any income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or re-assess such income or re-compute the loss or the depreciation allowances or any other allowances or deduction for such assessment year subject to the provisions of sections 148 to 153. The provisions under section 148 mandates that 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 before the Assessing Officer proceeds to make the assessment, re-assessment or re-computation under section 147. It further provides that if a notice is served upon the assessee, he is required to furnish within three months from the end of the month in which such notice was issued or such further period as may be allowed by the Assessing Officer to make a return of his income or the income of any other person in respect of which he is assessable under the IT Act during the previous year corresponding to the relevant assessment year.



7. The proviso to section 148 put an embargo on taking action except on fulfilling the conditions provided thereunder. First proviso to section 148 provides that no notice shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice. The Explanation thereof further provides that the Assessing Officer may assess or re-assess 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 section 147, irrespective of the fact that the provisions of section 148A were not complied with.

8. However, section 148A requires that before the Assessing Officer decides to issue notice under section 148 he should (a) conduct an inquiry and if necessary with the prior approval of the 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 by serving upon him a notice to show cause within such time as may be specified in the notice but not less than 7 days and not exceeding 30 days from the date on which such notice is issued or by the extended period if an application is made in this behalf, (c) consider the reply of the assessee furnished by him in response to the show cause notice referred to in clause-(b) and, (d) take a decision whether or not it is a fit case to issue notice under section 148 on the basis of the materials available on record including the reply of the assessee.



9. This is relevant to indicate that under the unamended section 147 the Assessing Officer could have initiated assessment/re-assessment proceedings only if he had 'reasons to believe' that the income chargeable to tax of an assessee has escaped assessment. After the amendment in sections 147 and 148 and insertion of section 148-A through Finance Act 2021 with effect from 01st April 2021, the Assessing Officer can initiate a proceeding of assessment/re-assessment on receiving information and the requirement of having 'reasons to believe' has been done away with. Explanations (1) & (2) to section 148 of the IT Act explain the expression "information" on the basis of which the Assessing Officer can proceed under section 148A. In "Union of India & Ors. Vs. Ashish Agarwal" (2023) 1 SCC 617 the Hon'ble Supreme Court held that the Assessing Officer is required to provide all information and materials to the assessee on which the Revenue seeks to place reliance so as to enable the assessee to effectively make its defence to the notice under section 148A(b) of the Income Tax Act. We find that the inquiry report was uploaded on VRU functionality on Insight portal and, as noticed above, a copy thereof was enclosed with the notice dated 28th March 2024. We are of the opinion that a detailed adjudication on the merits of the information available with the Assessing Officer and defence set up by the assessee is not contemplated at the stage of passing an order under section 148A(d). It is true that the Assessing Officer is required to pass an order which should contain a brief narration of facts and the defence set up by the assessee, but then, a conclusive finding as regards the defence taken by the assessee by the Assessing Officer is not required at this stage as



the same may prejudice the further proceedings. Moreover, the determination made by the Assessing Authority under section 147 is otherwise subject to appeal under section 246A of the Income Tax Act and therefore the merits of the information referable to section 148A remains subject to the assessment proceedings initiated under section 148. In "GKN Driveshafts (India) Ltd. vs. Income Tax Officer & Ors." 2003 (1) SCC 72, the Hon'ble Supreme Court held that when a notice under section 148 of the Income Tax Act is issued the proper course of action for the assessee is to file return.

10. The decision in "P.G.O. Processors Private Limited Vs. Commissioner, C. Ex." deals with the issue whether the assessee can insist on supply of authenticated copy of the document or opportunity to inspect the document may serve the purpose, or, if desired, obtain a photocopy thereof. The decision in "Chotanagpur Diocesson Trust Asson. Vs. Union of India" is also distinguishable on facts in as much as after issuing a notice under section 148A(b) of the IT Act, the Revenue started gathering information and the supporting documents. "Red Chilli International Sales Vs. Income Tax Officer & Anr." is a decision on the point that normally the writ petition should not be held not maintainable in view of the alternative remedy available to the assessee particularly because the provisions for re-opening the assessment have undergone changes after the Finance Act, 2021. Quite evidently, the aforementioned decisions do not provide any foundation to the petitioner-company to challenge the order passed under section 148A(d) of the IT Act.



11. The petitioner-company in its reply set up a defence that it has no knowledge about sale of 13 plots by Mr. Kamlesh Kumar Deora who was given a power of attorney on 7th June 2019 by Mrs. Manju Agarwal. She was authorized by the petitioner-company to take a decision about the lands situated at khasra No.33 measuring about 1 bigha and 2 biswa and khasra No.34 measuring about 8 bigha and 18 biswa. The petitioner-company referred also to a civil suit filed against it in the Jodhpur District Court filed by Aditya Singhvi and others for an injunction and order against it seeking restraint not to transfer the subject property comprised under khasra nos.33 and 34 at Daizar, Manaklao and Jodhpur. It is stated that the District Court by an order dated 25th June 2019 restrained the petitioner-company from making any further sale/alienation of the suit property. The petitioner-company took a stand that on account of the fraudulent activity of the power of attorney holder the sale-deeds executed by him shall not amount to sale of the property by the petitioner-company. Though the petitioner-company states that it came to its knowledge that sale-deeds are executed by Mr. Kamlesh Kumar Deora, still, it claims that it is in peaceful possession of the subject property. There is also a reference of a contempt petition filed against the power of attorney holder and the petitioner-company has taken a position in paragraph No.14 of its reply dated 3rd April 2024 that it did not take any action against the power of attorney holder because the sale-deeds executed by him are null and void.

12. The law relating to the power of attorney is governed by the provisions of the Powers of Attorney Act, 1882 and it is well-settled that an agent acting under the power of attorney always



acts in the name of his principal and any document executed or thing done by an agent on the basis of power of attorney is as effective as if executed or done by the principal himself. In "State of Rajasthan & Ors. Vs. Basant Nahata" 2005 (12) SCC 77, the Hon'ble Supreme Court held that through a power of attorney, an agent is formerly appointed to act for the principal for one or a series of transactions or to manage the affairs of the principal. We may also refer to "Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana" 2012 (1) SCC 656 wherein the Hon'ble Supreme Court held that a power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property and it is just a creation of an agency whereby the donor authorizes the donee to do the acts specified therein on his behalf and when a power of attorney is executed that shall bind the grantor as if the act was done by himself (refer, section 1-A and section 2 of the Power of Attorney Act 1882).

13. It is well-known that a power of attorney is a document of convenience and except in cases where a power of attorney is coupled with interest, it is revocable. No doubt the power of attorney holder acts in a fiduciary capacity but any act of infidelity or breach of trust shall necessarily be a matter between the donor and the donee. In that event, the remedy of the petitioner-company shall lie elsewhere and not before the writ Court by raising such a technical plea. In "Tmt. Kasthuri Radhakrishnan & Ors. Vs. M.Chinnian & Anr." 2016 (3) SCC 296, the Hon'ble Supreme Court held that any act or thing done by the agent on the strength of power of attorney is never construed and/or treated to have been done by the agent in his personal capacity so





as to create any right in his favor but is always construed as having been done by the principal himself. This is well settled in law that the powers under Article 226 of the Constitution of India are discretionary in nature and the writ Court must remain mindful whether the relief sought falls within the realm of private law or public law domain. The jurisdiction conferred on the High Court under Article 226 is no doubt very wide but it is an accepted principle that the High Court exercises its jurisdiction under Article 226 of the Constitution of India for a public law remedy and it is available against a body or person performing public law function. The stand taken by the petitioner-company that it had no knowledge about the sale transaction by the power of attorney holder is not a ground for the Revenue not to proceed against it. The petitioner-company shall be bound by the doctrine of agency and whatever act the power of attorney has done on his behalf by virtue of the power of attorney dated 07th June 2019 shall bind the petitioner-company. This is another issue to say that the power of attorney holder acted beyond the power authorized to him and, then in that case, the dispute shall be between the petitioner-company and the power of attorney holder.

14. For the foregoing reasons, we find no merits in this case and, therefore, D.B. Civil Writ Petition No. 6475/2024 is dismissed.

(KULDEEP MATHUR),J

(SHREE CHANDRASHEKHAR),J

2-AjaySingh

Whether fit for reporting: Yes/No