

Court No. - 5

Case :- MISC. BENCH No. - 35701 of 2018

Petitioner :- Gopal Kesarwani

Respondent :- Director General Of Income Tax (Investigation) Lucknow & Ors

Counsel for Petitioner :- Pradeep Agrawal

Counsel for Respondent :- Manish Misra

Hon'ble Dr. Devendra Kumar Arora,J.

Hon'ble Alok Mathur,J.

Heard Sri Pradeep Agrawal, learned Counsel for the petitioner and Sri Manish Misra, learned Counsel for the respondents.

Petitioner has approached this Court by filing instant writ petition under Article 226 of the Constitution of India challenging the notice under section 153A of the Income Tax Act along with notices under section 143 (2) of the Act for the assessment years 2011-12 to 2016-17. The petitioner apprehends that for the block assessment for the aforesaid years the assessing officer will include the income declared by the petitioner under the Pradhan Mantri Garib Kalyan Yojana, 2016 (in short "PMGKY") for which the petitioner has already paid tax of Rs.6,01,91,010/- despite the fact that under clause 199I of the said scheme the amount of undisclosed income declared in accordance with section 180 shall not be included in the total income of the declarant for any assessment year under the income tax act, if the declarant make the payment of tax and surcharge referred to in section 184 and penalty referred to in section 185, by the date specified under subsection (1) of section 187.

Learned Counsel for the petitioner has submitted that in pursuance to the Pradhan Mantri Garib Kalyan Yojana, 2016, he had deposited a sum of Rs.10,45,00,000/- (Ten crore forty five thousand only) in Current Account No.437201010035238 with Union Bank of India after

demonetization of currency on 09.11.2016 and simultaneously a sum of Rs.4,65,96,000/- (Four crore sixty five lakh ninety six thousand only) was deposited in Current Account No.053010200014049 with Axis Bank out of the sale proceeds for the period 01.04.2016 to 31.03.2017. On 09.12.2016, a notice under Section 131 of the Income Tax Act, 1961 was issued by the Assistant Director of Income Tax (Investigation)-II, Lucknow to furnish the details of the cash deposited in the aforesaid bank accounts after 10.11.2016 alongwith a copy of the audited accounts for the Financial Year 2015-16.

It has further been submitted by the learned Counsel for the petitioner that the Income Tax Department after not being satisfied with the reply, conducted a search at the residential and business premises of the petitioner and his wife. In the meantime, Pradhan Mantri Garib Kalyan Yojana, 2016 (in short "PMGKY") was notified on 17.12.2016 in which the petitioner had surrendered and deposited a sum of Rs.12,06,23,250/- (Twelve crore six lakh twenty three thousand two hundred fifty only), on which, the petitioner had deposited Rs.3,61,86,975/- as tax, Rs.1,19,41,701/- as surcharge and Rs.1,20,62,325/- as penalty and, therefore, the petitioner had deposited Rs.6,01,91,010/- in PMGKY on 31.03.2017.

Learned Counsel for the petitioner has contended that after deposition of the aforesaid amount of Tax, surcharge and penalty, the petitioner is entitled for the benefit of the provisions of Sections 199-I and 199-J of the PMGKY, 2016 and, therefore, the income which is disclosed as aforesaid would not be included in total income and it cannot be assessed subsequently on the income so disclosed by him. The petitioner has further taken us through the notice under Section 153A of the Income Tax Act, which has been issued subsequent to the proceedings issued under Section 153A for the Assessment years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 to which the petitioner has submitted a

reply on 26.11.2018 to the Deputy Commissioner of Income Tax, Central Circle-II, Lucknow.

A perusal of the said reply filed by the petitioner before the Assessing Officer in pursuance the notices under section 153A for the AY 2011-12 to 2016-17 reveals that the petitioner has duly informed his Assessing Officer about the amount deposited under the aforesaid PMGKY, 2016 and has requested that the said income be not included in the total income for the aforesaid block assessment.

Learned Counsel for the respondent has raised a preliminary objection regarding maintainability of the writ petition. He has submitted that the instant writ petition is premature, inasmuch as, the petitioner has approached this Court challenging the show cause notice for which reply has already been submitted by him and the proceedings are pending before the Assessing Authority, who shall after considering all the material on record collected during the proceedings under Section 132 as well as reply submitted by the petitioner in response to the notice under Section 153A of the Income Tax Act would pass appropriate order in accordance with law.

The main apprehension of the petitioner at this stage is that the income which has been disclosed under the PMGKY, may also be included as total income while making the assessment of the aforesaid block assessments as mentioned in the notices issued under Section 153A of the Income Tax Act.

The petitioner has relied upon clauses 199I and 199J of the PMGKY which are identical and similar to the Clauses 188 and 189 of the Income Declaration Scheme 2016 which is being reproduced here under:-

“188. Undisclosed income declared not to be included in total income- *The amount of undisclosed income declared in accordance with section 183 shall not be included in the*

total income of the declarant for any assessment year under The Income Tax Act, if the declarant makes the payment of tax and surcharge referred to in section 184 and the penalty referred to in section 185, by the date specified under subsection (1) of section 187.

189. Undisclosed income declared not to affect perfect finality of completed assessments :- *A declarant under this scheme shall not be entitled in respect of undisclosed income declared or any amount of tax and surcharge paid thereon, to reopen any assessment or reassessment made under the Income Tax Act or the Wealth Tax Act, 1957 (27 of 1957) or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.”*

Learned Counsel for the respondents, on the basis of the written instructions received from Deputy Commissioner of Income Tax, Central Circle-II, Lucknow, who is also the Assessing Authority, has unequivocally stated that in any case, as per the law any income which has been declared under PMGKY shall be required to be excluded from the total income being assessed under Section 153A and hence the petitioner should have no grievance. However, the petitioner has onus of giving evidence of income, if any, disclosed under PMGKY for its exclusion during assessment under Section 153A.

During the course of argument, learned counsel for the petitioner has confined his prayer only to payer no.1 in the writ petition, and has not pressed any other grounds. As both the parties have given their consent for disposal of the writ petition at the admission stage itself, we proceed to decide the matter finally.

We have heard the counsel for the parties as well as perused the averments made in writ petition and in the written instructions obtained by the counsel of the respondent. The petitioner has voluntarily surrendered and deposited tax, surcharge and penalty under the PMGKY on the conditions held out in the said scheme as laid down in clause 199I and 199J which clearly provides that the amount of undisclosed income

declared in accordance with section 180 shall not be included in total income of the declarant for any assessment year under the Income Tax Act, if the declarant make the payment of tax and surcharge referred to in section 184 and the penalty referred to in section 185, by the date specified under subsection (1) of section 187, and further embargo has been placed upon the department not to reopen any assessment of reassessment under the said provision .

The show cause notices dated 30.05.2018 issued under Section 153A of the Income Tax Act, 1961 pertain to the assessment years 2011-12 to 2016-17. It may be possible that the income surrendered by the petitioner may relate to any period covered by the aforesaid notices, and for those assessment years the embargo as provided for in clause 199I and 199J may apply. It is for the assessing officer to come to such a finding after going through the declarations made by the petitioner under the PMGKY as well as the response filed pursuant to the said notices.

Ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet as the challenge is premature. Show cause notice or charge sheet is not an adverse order or something which constitutes a cause of action unless the same has been issued by a person having no jurisdiction. A writ petition is maintainable only when a right of parties is infringed, which normally happens when a final order imposing punishment or having adverse effect is passed. Show cause notice by itself in most cases does not require interference unless it is found to be wholly without jurisdiction or wholly illegal. In *Union of India versus V.K. Laboratories, (2007) 13 SCC 270*, the Supreme Court emphasized abstinence from interference at the stage of issuance of show cause notice and need to relegate the parties before the authorities concerned unless a clear case for lack of jurisdiction or abuse of process of law is made out.

After going through the written instructions submitted by the respondents, we are satisfied that the apprehension and the grievance of

the petitioner has duly been taken note of by the respondents and we hope and trust that it will be taken into consideration, while making the final assessment order under Section 153A of the Income Tax Act.

No interference is called for by us in exercise of writ jurisdiction Article 226 of the Constitution of India, as the notices have been issued by the competent authority (Assessing Authority), and no lack of jurisdiction has been alleged or pointed out by the petitioner.

However, in the light of the discussion made hereinabove, the grievance of the petitioner stands fully redressed in light of the written instructions of the respondents which state that the income which has been disclosed by him under the PMGKY shall be excluded from the assessment of the block year for which notice under Section 153A has been issued by the respondents.

For the reasons stated above, we do not find any reason to interfere in the matter. Accordingly the writ petition is *disposed of*.

Order Date :- 12.12.2018

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