



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1933 OF 2023

**Nimir Kishore Mehta,**

Age 42 years, Occupation : Service,  
B21, 3<sup>rd</sup> Floor, Paritosh, V. L. Mehta Road,  
Vile Parle – (West), Mumbai – 400 049,  
PAN : AIGPM0519G.

...Petitioner

*Versus*

1. **Assistant Commissioner of Income Tax,**  
Circle-32(1), Mumbai, 702, 7<sup>th</sup> Floor,  
Kautilya Bhavan, C-41 to C-43, G Block,  
BKC, Bandra (East), Mumbai,  
Maharashtra – 400 051.

[mumbai.dcit32.1@incometax.gov.in](mailto:mumbai.dcit32.1@incometax.gov.in).

2. **Union of India** through the Secretary,  
Department of Revenue, Ministry of Finance,  
North Block, New Delhi – 110 001.

...Respondents

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Dr. K. Shivaram, Senior Advocate i/b Mr. Shashi Bekal for  
Petitioner.

Ms. Sushma Nagaraj (through V.C.) a/w Ms. Sakshi Kapadia for  
Respondents-Revenue.

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CORAM: K. R. SHRIRAM &  
DR. NEELA GOKHALE, JJ.  
DATED: 28<sup>th</sup> March 2024

**ORAL JUDGMENT : (Per K. R. Shriram, J.)**

1. Since pleadings in the petition are completed, by consent of  
Counsels we taken up the matter for disposal at this stage itself.  
Therefore, Rule. Rule, made returnable forthwith.

2. Petitioner is an individual and Non-resident Indian (“NRI”).  
According to Petitioner, he has been NRI since Assessment Year

("AY") 2017-2018. For the year under consideration, i.e., AY 2016-2017, Petitioner was a 'Resident'. For AY 2016-2017, Petitioner on 26<sup>th</sup> October 2016, filed his Return of Income ("RoI") declaring an income of Rs. 38,98,110/-. Petitioner's RoI was processed under Section 143(1) of the Income Tax Act, 1961 ("the Act") on 1<sup>st</sup> February 2018.

3. Petitioner received a notice dated 25<sup>th</sup> March 2023 under Section 148A(b) of the Act alleging that there was information that the income of Petitioner had escaped assessment for AY 2016-2017. The information relies on the statement recorded during the course of search and seizure action conducted under Section 132 of the Act in the case of one Ashwin Kumar Mali. As per the information, Petitioner/Assessee had undertaken a financial transaction in the sum of Rs. 1,30,66,755/- with one Secure Exim Private Limited ("SEPL") and said SEPL was controlled by Ashwin Kumar Mali and said entity was providing accommodation entries of bogus sale/purchase and bogus unsecured loans to various entities in lieu of cash. Assessee allegedly had entered into fictitious loan transactions with SEPL, which provides accommodation entries, which suggest income chargeable to tax has escaped assessment in the case of Assessee. The relevant portion of information reads as under :

*"1. Whereas in your case for the A.Y. 2016-2017 relevant to FY 2015-2016, information is available in accordance with the risk management strategy*

*formulated by the Board. Information was received in category of information on Insight Portal of the department. As per the information uploaded, it is noticed that assessee had undertaken following financial transactions :*

<b>Sr. No.</b>	<b>Name of the party with whom transaction made</b>	<b>PAN</b>	<b>Amount of transaction</b>
1	Secure Exim Pvt. Ltd.	AAUCS0399F	130,66,755/-

*The information as emanating from a search action u/s. 132 of the Act in the case of Mr. Ashwin Kumar Mali at his residence and office on 05.07.2022. In the course of search, statement on oath Mr. Ashwin Kumar Mali where he accepted that he is running and controlling various concerns for providing accommodation entries of bogus sale/purchase and bogus unsecured loans to various entities in lieu of cash. The said list of entities include Secure Exim Private Ltd. The assessee had entered into fictitious loan transactions with the party who provides accommodation entries (relevant portion of information etc., statements of the key persons of the entities with whom fictitious transactions were entered during the F.Y. 2015-2016 enclosed).*

*2. The above information suggests that income chargeable to tax has escaped assessment in the case of the assessee.”*

4. This notice was issued by Respondent No. 1, Assistant Commissioner of Income Tax, Circle-32(1), Mumbai.

5. Petitioner replied by a letter dated 6<sup>th</sup> April, 2023, in which Petitioner denied having any financial transaction in the sum of Rs. 1,30,66,755/-. Petitioner explained that he had only taken loan of Rs. 40,00,000/-, which has also been repaid during the next financial year and since the amount was below Rs. 50,00,000/- and the assessment was being reopened after the expiry of three years from

the end of relevant assessment year, under the provisions of Section 149(1)(d) of the Act no notice under Section 148 of Act could be issued. Petitioner also brought to the notice of Assessing Officer (“AO”), i.e., Respondent No. 1 that Petitioner has been an NRI since last six years and has been filing his Income Tax Returns as NRI and even the e-filing portal shows Petitioner’s residential status as “Non-resident”. Hence, the jurisdiction would lie with Income Tax Officer (International Taxation), Ward-3(2)(1). In effect Assessee/Petitioner informed Respondent No. 1 that he had no jurisdiction to issue the notice under Section 148A(b) of the Act.

6. The AO has, in our view, taken an unacceptable stand that Assessee has not proved with substantial evidence and documents and has not been able substantiate his claim as an NRI. We also fail to understand what evidence Assessee has to show when Assessee makes the statement that in the income tax returns filed by him, his residential status appears as “Non-resident”. So also, in the income tax portal, his residential status shown as “Non-resident”. In fact the intimation under Section 143(1) of the Act issued to Assessee for AYs 2019-2020, 2021-2022, 2022-2023 and 2023-2024, all show the residential status of Petitioner as “Non-resident”. Therefore, we would not hesitate to observe that the stand taken by the AO is a dishonest stand.

7. Respondent No. 1 thereafter passed the impugned order dated 12<sup>th</sup> April 2023 under Section 148A(d) of the Act in which, according to us, the AO has accepted that he had no jurisdiction, but because there was no time to mitigate the PAN at the stage it was, he went ahead and has issued the reassessment notice. Paragraph No. 5.2 of the impugned order reads as under :

*“5.2 Further, the assessee stated that since he is an NRI, the jurisdiction of his case lies with International Taxation, Ward 3(2)(1), Mumbai and the undersigned has no jurisdiction over this case. It is seen from the return of income for A.Y. 2016-17 that the assessee has shown his status as 'Resident' in the return of income filed. Moreover, the assessee has not provided substantial evidences and documents and has not been able to substantiate his claim as a Non Resident. Further, it is to be stated that the information and PAN of the assessee was transferred to the charge of the undersigned at the fag end of March, 2023, for issuing notice u/s 148A(b) of the Act, which was getting time barred by limitation on 31.03.2023. It has only come to the knowledge of the undersigned that the assessee is an NRI, when submissions against notice u/s. 148A(b) of the Act is made. There is no time left for the undersigned to migrate the PAN at this stage without completing the reopening proceedings. Moreover, it is pertinent to mention that the present proceedings are those initiated u/s. 148A of the I.T. Act, 1961. It is well settled that at the notice stage only prima facia reasons are adequate and it is not necessary to give a conclusive finding about the issue involved. This proposition has been held in a number of decisions including the one rendered by the Hon'ble Supreme Court in ACIT v. Rajesh Zaveri Brokers (P) Ltd. [2007 291 ITR 500/161 Taxman 316].”*

8. As regards the amount of Rs. 40,00,000/- only taken as loan, Respondent No. 1 has not explained as to how the loan taken can be

treated as an income. He has also not explained when the loan taken is only Rs. 40,00,000/- during AY 2016-2017, how does the amounts paid totalling to Rs. 1,30,66,755/- by Assessee to the SEPL will also be an income in the hands of Assessee.

9. Dr. Shivaram submitted that notice, if any, for reopening under Section 148A of the Act could be issued only by an officer, who had jurisdiction over the Petitioner. Dr. Shivaram further submitted that only the Commissioner of Income Tax (International Taxation)-3, Mumbai and the officers under him will have jurisdiction to issue the impugned notice to Petitioner. Dr. Shivaram relies upon a notification no. SO 2814(E) [No. 57/2014 (F. No. 187/29/2014 ITA.I)] dated 3<sup>rd</sup> November 2014 issued by Central Board of Direct Taxes under Section 120 of the Act – jurisdiction. Dr. Shivaram also submitted that the notice issued by Respondent No. 1, therefore, was invalid and of no effect since it is issued by an officer who did not have jurisdiction over Petitioner.

10. Since in the affidavit-in-reply a stand is taken that the file can be transferred now to the AO who had jurisdiction over Petitioner, Dr. Shivaram submitted, relying on *Commissioner of Income Tax v. M.I. Builders (P) Limited*<sup>1</sup> that the notice issued by Non-jurisdictional Assessing Officer is invalid, no records can be transferred when the proceedings were invalid *ab-initio* and such transfer cannot validate

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1. [2014]44 taxmann.com 360 (Allahabad).

any proceedings taken in continuation thereof.

11. Ms. Nagaraj appearing for Respondents-Revenue relying on a judgment of Hon'ble Delhi High Court in *Abhishek Jain v. Income Tax Officer and Another*<sup>2</sup> submitted that the objections as to the jurisdiction of AO cannot be equated with lack of subject matter jurisdiction and therefore, the fact that Respondent No. 1 has issued a notice under Section 148A(b) of the Act, cannot be fatal.

In our view, this judgment does not help in the case of Respondents-Revenue because that was a case where the AO had concurrent jurisdiction. That was not a case where *per-se* there was lack of jurisdiction.

12. This Court in *Pavan Morarka v. Assistant Commissioner of Income Tax-2*<sup>3</sup> following *M.I. Builders (supra)* has held that a notice issued by an officer who did not have jurisdiction over Assessee, would be invalid. Paragraph No. 16 of the said judgment reads as under :

*“16. Respondent's stand that the Assessing Officer at New Delhi had issued a notice under section 148 of the said Act on petitioner on 22<sup>nd</sup> March 2013 before the limitation period expired and, therefore, the impugned notice issued by the Assessing Officer at Mumbai in continuation of the said proceedings must also be treated as valid and within time is misconceived. This is because we notice that the notice issued by the Assessing Officer at New Delhi itself was invalid and of no effect*

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2. 2018 SCC OnLine Del 9435.

3. [2022]136 taxmann.com 2 (Bombay).

*since it was issued by an officer who did not have jurisdiction over petitioner. We gather support from the case of CIT v. M.I. Builders (P) Ltd. (supra), the assessee had raised the objection with regard to continuation of the proceedings by Income-tax Officer – 1(I), Lucknow on the ground that the said proceedings are illegal as the notice under section 148 of the said Act issued itself was devoid of proper jurisdiction and ab initio void. The Income-tax Officer – 1(I), Lucknow, however, without considering the objection continued to proceed in the matter and passed the assessment order and also directed to initiate penalty proceedings. The CIT(A) dismissed the appeal of the assessee but the ITAT in the appeal filed by the assessee allowed the appeal of the assessee on the ground that notice issued under section 148(1) of the said Act was without jurisdiction and, therefore, the subsequent proceedings are invalid. Feeling aggrieved, the Revenue preferred an appeal before the High Court. While dismissing the appeal of the Revenue, the Court held that when the notice under section 148(1) of the said Act was issued, ACIT, Range-IV, Lucknow had no jurisdiction over the assessee as the jurisdiction over the assessee was transferred to the Additional CIT, Range-I, Lucknow. It was held that there cannot be situation where two Assessing Officers would have simultaneous jurisdiction over the assessee. Accordingly, it was held that the Tribunal had rightly held that the issuance of notice under section 148(1) of the said Act by the non-jurisdictional Assessing Officer was without jurisdiction.”*

13. It will also be useful to reproduce paragraph no. 17 of *M.I. Builders (supra)* and it reads as under :

*“17. Having heard learned Counsel for the parties and perusing the records, we are of the view that on 29.03.2004, when the notice under Section 148(1) of the Act was issued, ACIT, Range-IV, Lucknow have no jurisdiction over the Assessee on the date of issuance of such notice as the jurisdiction over the Assessee was transferred to the Additional CIT, Range-I, Lucknow vide order dated 01.08.2001 passed under Section 120 of the Act by the CCIT, Lucknow. Therefore, it cannot be*



*situation where two Assessing Officers would have simultaneous jurisdiction over the assessee, one being Additional CIT, Range-I, Lucknow and other being ACIT, Range-IV, Lucknow. In these backgrounds, the Tribunal has rightly held that the issuance of notice under Section 148(1) of the Act by the ACIT, Range-IV, Lucknow was without jurisdiction.”*

14. In the circumstances, the fact that Petitioner has been filing returns as a Non-resident, cannot be disputed. The fact that the Income Tax Officer (International Taxation) would be the AO who had jurisdiction over Petitioner, cannot be disputed.

15. The further point is Respondent No. 1 has also in effect admitted that he has no jurisdiction over Assessee, but he issued the notice because the information and PAN of Assessee were transferred to the charge of Respondent No. 1 at the fag end of March 2023 for issuing notice under Section 148A(b) of the Act and it was getting time barred by limitation on 31<sup>st</sup> March 2023. He also admits that it has come to his knowledge that Assessee is an NRI when the reply to notice under Section 148A(b) of the Act was made. Notwithstanding that Respondent No. 1 did not migrate the PAN also of Assessee to the concerned AO because according to him, the time was short and notice stage only *prima-facie* reasons are adequate and it is not necessary to give a conclusive finding about the issue involved.

16. We are not satisfied with the explanation offered of shortage of time and that still cannot give jurisdiction to the AO, who did not

have jurisdiction.

17. In the circumstances, Rule is made absolute in terms of prayer clause (a), which reads as under :

*“(a) That this Hon’ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction, calling for the records of the Petitioner’s case and after going into the legality and propriety thereof, to quash and set aside (i) Notice dated April 12, 2023 issued by the Respondent No. 1 under Section 148 of the Act [Ex – A], (ii) the impugned order also dated April 12, 2023 passed under Section 148A(d) by the Respondent No. 1 [Ex – B] and (iii) the impugned Notice dated March 25, 2023 issued under Section 148A(b) of the Act [Ex – C-2].”*

18. Petition disposed. There will no order as to costs.

19. At this stage, Ms. Nagaraj requested that Respondents’ rights and contentions to issue fresh notice be kept open.

20. In our view, such a liberty is not required because the Revenue may take such steps as available in accordance with law and Assessee may defend the same.

**(DR. NEELA GOKHALE, J.)**

**(K. R. SHRIRAM, J.)**