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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 13075/2022 & CM APPLs. 39588-39589/2022

JAIN COOPERATIVE BANK LIMITED ..... Petitioner

Through: Mr. Gagan Narang, Advocate with
Mr. Rudraksh Gupta, Advocate.

versus

ASSISSTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE 28, DELHI & ANR. ..... Respondents

Through: Mr. Ajit Sharma, Advocate with
Mr. A. Renganath, Advocate.

% Date of Decision: 08th September, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present writ petition has been filed challenging the Order passed under Section 148A(d) and the Notice issued under Section 148 of the Income Tax Act, 1961 ('the Act') dated 30th July, 2022 for Assessment Year 2017-18.

2. Learned counsel for the petitioner states that the reassessment proceedings cannot be initiated merely based on 'suspicion' or 'surmise' and

the reasons for reopening as provided in the impugned Notices are insufficient and amount to a mere 'change of opinion' on an aspect already known to the respondents. He states that the cash deposited in Bank during demonetization and / or remitted by way of cheques were duly disclosed in the Income Tax Return Form, and Financial Statements of the Assessee. He asserts that the cash deposited belonged to the assessee's customers/ depositors and was not the assessee's money. He states that there has been no complaint against the Bank by its customers / depositors and all the data duly synchronized had been made available to the respondents on multiple occasions.

3. He further submits that the primary allegation for initiating reassessment proceedings against the petitioner is that irregularly high amount of currency notes had been deposited in the petitioner's accounts during AY 2017-18 i.e. during demonetization. He states that the respondents have failed to consider that the petitioner, being a bank, was merely following the RBI's instructions and high volume of old 500 and 1000 currency notes were deposited with the petitioner by its customers during the permitted period by the RBI.

4. He submits that no foul play was detected during search and seizure operations conducted by the IT department in 2018 and the assessment proceedings were completed vide Assessment Order dated 29th December, 2018. He submits that the bank is now being arbitrarily subjected to reassessment proceedings even after the accounts where cash was deposited have already been assessed.

5. He also states that the impugned notice and order are void-ab-initio as the respondent No. l has failed to comply with Section 148A (d) as well as

the Instruction No. l of 2022 issued by respondent No.2 which provide that the assessing officer, shall decide on material available on record including the reply of the assessee. He points out that the Notice dated 31st May, 2022 issued under Section 148A(b) granted time of two weeks (before 14 days) to the assessee to respond. He contends that though the assessee vide the letter dated 13th June, 2022 sought further time to gather information, yet the AO did not respond to the request of the assessee. He points out that the assessee vide the letter dated 28th June, 2022 filed detailed reply, which was not considered by the Assessing Officer. He submits that the action of respondents in issuing order dated 30th July, 2022 without taking into consideration the detailed reply dated 28th June, 2022 filed by the petitioner in response to the respondent No.l's letter / Show Cause Notice dated 31st May, 2022 is illegal.

6. Having heard learned counsel for the petitioner, this Court is of the views that the petitioner has challenged the reopening proceedings on merits of the case. The Supreme Court in the case of ***Raymond Woollen Mills Ltd. vs. ITO And Ors., [1999 236 ITR 34 SC]*** has held as under:-

> *"3. In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case.* ***The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding.*** *We are*

> *not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."*
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> (emphasis supplied)

7. Further, as per the notice issued under Section 148A(b) the reassessment proceedings were initiated on the basis of suspicious transactions flagged by the FIU [Financial Intelligence Unit]. It is pertinent to mention that the petitioner is registered as a non-scheduled Urban Co-operative bank who 'maintained current accounts with Chandni Chowk, Shakarpur and Karkardooma Branches, New Delhi a/c no. 523011066574, 523011066582, 634011031880, 683011012827, 683011012860 had deposited huge cash amounting to Rs.141.28 crores during the period from 01st April, 2016 to 31st December, 2016'. From the Search Assessment order under Section 153A dated 29th December, 2018, it is not clear whether these deposits were verified by the Assessing Officer or not. In fact, the Assessment Order passed under Section 153A read with Section 143(3) dated 29th December, 2018 is an order passed pursuant to the search, wherein it seems only the documents seized during the search were considered. The said order does not reveal that the aspect of cash deposits was specifically examined by the Assessing Officer. The Supreme Court in the case of ***Income Tax Officer v. Techspan India Pvt. Ltd. and Anr., (2018) 6 SCC 685*** has held under:-

> *"12. Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an*

> *opinion on a matter which is the basis of the alleged escapement of income that was taxable.* ***If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed re-assessment proceedings.*** *Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the re-assessment proceedings."*
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> (emphasis supplied)

8. Further, as far as non-consideration of petitioner's reply is considered, it is settled law that '*principle of natural justice is no unruly horse and no lurking land mine*' as held by Mr.Justice Krishna Iyer in ***Chairman, Board of Mining Examination and Chief Inspector of Mines Vs. Ramjee, (1997) 2 SCC 256***. In fact, in ***M/s S.Tikara Vs. State of M.P. & Ors, AIR 1997 SC 1691***, it has been held that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. Consequently, the questions that arise are whether there has been any unfair deal by the respondent?

9. In the present instance, in view of the allegation of cash deposits of 141.28 crores during demonetization period, this Court is of the opinion that even if the reply now sought to be relied upon by the petitioner was taken into account, notice under Section 148 of the Act was called for – as a prima facie case of escapement of income was made out. Consequently, no ground for interdicting the reassessment is made out at this stage.

10. Accordingly, the present writ petition along with pending applications is dismissed. However, this Court clarifies that the Assessing Officer shall decide the matter on its own merits without being influenced by any

observation made in the present order. The rights and contentions of all the parties are left open.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 8, 2022
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