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WP-1421-2001

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

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HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 3rd OF DECEMBER, 2025WRIT PETITION No. 1421 of 2001*NARESH CHANDRA AGRAWAL**Versus**INCOME TAX DEPARTMENT AND OTHERS*

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Appearance:

*Shri Sumit Nema - Senior Advocate with Shri Ayush Gupta and Shri
Mukesh Agrawal - Advocates for the petitioner.*

*Shri Shubham Manchani with Shri Harpreet Singh Gupta - Advocates
for the respondents*

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ORDER

RESERVED ON : 12.11.2025

PRONOUNCED ON : 03.12.2025

Per. Justice Vivek Rusia

The petitioner has filed the present petition challenging the notices issued under Section 143(2) of the Income Tax Act, 1961 (in short "the Act") dated 14th August, 2000, 6th September, 2000, 11th October, 2000, 21st December, 2000 and 5th March, 2001, fixing the date of appearance to conduct assessment proceedings to scrutinize the accounts, income and expenditure and tax liabilities etc relevant to financial years 01.04.1994 to 31.03.1995, 01.04.1995 to 31.03.1996 and 01.04.1996 to 31.03.1997.



The petitioner has also challenged the order passed under Section 144A of the Act dated 2nd March, 2001, whereby the application for setting aside the aforesaid proceedings, has also been rejected.

2. The facts of the case, in short, are as under :-

a . The petitioner is a partnership firm of M/s Agrawal Tractors, Panna Naka, Satna. Apart from the petitioner, there are two other partners, namely, Shri Naresh Chandra Agrawal and Smt. Pushpalata Agrawal. The Firm is engaged in the business of purchase and sale of tractors, motorcycles, tractor parts and motorcycle parts and such other allied businesses. The Firm has been maintaining all the sales and purchase vouchers for the purpose of audit and payment of taxes. Admittedly, the Firm could not submit the income tax returns for the assessment years 1996-97 and 1997-98 within the stipulated time.

b. The Finance Department of the Central Government came up with the scheme of the Voluntary Disclosures of Income Scheme, 1997. The petitioner submitted a declaration under Section 64 of the Voluntary Disclosure of Income Scheme, 1997 (in short "the Scheme"), disclosing income from its business. As per the declaration given by the petitioner under the Scheme, the Certificate dated 06.01.1998 was issued by the Commissioner of Income Tax, Jabalpur and tax was paid accordingly.

c . Being an Assessment Officer of the petitioner-Firm, declarations of the income of the aforesaid years were examined by the Respondent No.1, and found vast difference and evasion of taxes, hence issued notice dated 01.09.1998 under Section 148 of the Income Tax Act, 1961. The



respondent No.1 found that the Firm has declared less income and found a difference between the income declared in the income tax return as well as the income shown in the Scheme, which resulted in the issuance of notice under Section 148 of the Act for the purpose of assessing the income and not for reassessment. The petitioner was served with the notice dated 14th August, 2000, under Section 143 (2) of the Act. In response to the aforesaid notice, the petitioner had submitted an objection before filing writ petitions.

d . The respondent No.1 issued further notices dated 6th September, 2000, 11th October, 2000, 21st December, 2000 and 5th March, 2001 under Section 143 (2) of the Act. The petitioner submitted an objection seeking instructions from respondent No.2 to refrain respondent No.1 from proceeding with the scrutiny assessment of the years 1996-97 and 1997-98.

e . After hearing learned counsel for the petitioner, the respondent No.1 passed an impugned order dated 2nd March, 2001 under Section 144A of the Income Tax Act, 1961. The respondent No.2 rejected the request of the petitioner and directed the respondent No.1 to proceed in accordance with the law. Hence, this petition is before this Court.

Submissions

3 . While issuing notice to the respondents, this Court passed an interim order dated 23.03.2001 to the effect that the assessment proceedings should continue, but the same shall not be finalised till 09.04.2001. The petitioner has assailed the impugned notice and order on the following grounds :-



(i) That the Notice under Section 143(2) of the Income Tax Act by Respondent No.1 is in violation of the instructions of the C.B.D.T and, therefore, should be quashed.

(ii) That the Notices issued are without following the norms laid down in Instruction No.1967 and 1984 of the C.B.D.T and, therefore, illegal and should be quashed.

(iii) That any income which is disclosed under the Voluntary Disclosure of Income Scheme, 1997 cannot be subjected to tax under the Income Tax Act and therefore Notice under section 143(2) is also in contravention to the Voluntary Disclosure of Income Scheme 1997 and are therefore liable to be quashed.

(iv) That the order under section 144-A passed by Respondent No.2 is without appreciating the instructions of the Board are illegal and liable to be annulled."

4 . After issuance of notice, the respondents filed the reply raising preliminary objections about the maintainability of the Writ Petition for want of an alternate remedy, which are reproduced below:-

"a. The answering respondent submits that the submission of petitioner as regards the declaration of income under VDIS Scheme for the above assessment years is concerned; the petitioner will get immunity of such income declared under VDIS. The position of income declared under VDIS and that declared in the return in response to notices under section 148 is as



under:

*A. Yr. Income declared under Income as per a/c Addl.
Income which VDIS
declared in return undisclosed under*

VDIS (Diff. 3-2)

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>95-96</i>	<i>Rs.42620/-</i>	<i>Rs.83440/-</i>	<i>Rs.40820/-</i>
<i>96-97</i>	<i>Rs.92470/-</i>	<i>Rs.73570/-</i>	<i>NIL</i>
<i>97-98</i>	<i>Rs.76310/-</i>	<i>Rs.116800/-</i>	<i>Rs.40490/-</i>

b. Since petitioner (assessee) has failed to furnish its return of income under section 139(1) of the Act, the respondent no.1 issued a notice u/s148 and the same was duly served on 08.09.1998 and the petitioner (assessee) did not file return of income within thirty days after receipt of notice. Thereafter, the respondent no.1 proceeded to finalize the assessment exparte and for the said issued notice u/s142(1) on 15.10.99 and the case was fixed for assessment on 22.11.99. The petitioner filed its return of income on 30.11.99 i.e. after issue of a letter dated: 22.11.99. The petition as such deserved to be dismissed as the petitioner has concealed the major facts in relation to the instant petition.

c. It is further submitted that since the petitioner has failed to furnish return of income u/s 139(1) and even after receipt of notice u/s 142(1), the respondent had reasons to believe that substantial revenue is involved in this case and accordingly he proceeded to complete the assessment after scrutiny. The instructions as such are



for honest taxpayers who file their return within the prescribed time limit and as such these instructions are not applicable to the facts of the case.

d. It is further submitted that present assesmentproceedings are re assessment proceedings as the petitioner firm opted to declare the income under VDIS and tax had also been paid against such declaration. The assessing officer was of the view that there is under assessment and he proceeded to call the return and the petitioner firm filed the return disclosing the undeclared income only.

e. The answering respondent submits that the income disclosed under VDIS was not complete and therefore initiation of action under section 148 was well within his powers, in the light of decision of Hon'ble High Court reported in 241 ITR 216 case of Smt. Sashi Devi VS Income Tax Officers and others. Hence the contents of this paras deserve to be rejected."

Appreciation & Conclusions

5 . As per sub-section 2 of Section 143 (2) of the Income Tax Act, 1961 when the return has been made u/S 139, or in response to a notice under sub-section (1) of Section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not disclosed the actual income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified



therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.

6. After furnishing the evidence, the Assessing Officer shall pass an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him. After the disclosure of income made by the petitioner under the Voluntary Disclosure Scheme of Income Scheme, 1997, the difference was found with the income declared in the tax return. Section 147 of the Act also provides for assessment or reassessment by the Assessing Officer or any income chargeable to tax which has escaped assessment for any assessment year. As per the proviso attached to Section 147, where an assessment under Section (3) of Section 143 has been made, no action shall be taken after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year. Section 148 of the Act provides that the Assessing Officer shall serve on the assessee a notice requiring him to furnish a return of his income where the income has escaped assessment. Before proceeding with the assessment, re-assessment and re-computation under Section 147 of the Act. Section 149 of the Act specifies the time limit for issuing a notice.

7. Learned Senior Counsel has placed reliance on Section 151 of the Income Tax Act, which provides for sanction on issuance of notice under Section 148 by an Assessing Officer who is below the rank of Assistant Commissioner or Deputy Commissioner unless the Joint Commissioner has



certified on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice. If the four years have elapsed from the end of the relevant assessment year, no notice shall be issued unless the Chief Commissioner is satisfied and records the reasons for such issuance of notice. As per the proviso attached to sub-Section 1 of Section 151, the petitioner may raise all these objections in the assessment proceedings. Therefore, after examining the record, the Assessment Officer would determine whether the sanction is there or not. Since this petition has been filed, therefore, the respondent has had no occasion to conclude the proceedings. The main contention of the petitioner is that under the Voluntary Disclosure Scheme of Income Scheme, 1997 cannot be subject to the tax under the Income Tax Act; therefore, the notice under Section 143(2) is liable to be quashed, which contravenes the very Scheme, 1997 itself.

8. Under Section 64 of the Finance Act, the minor would be entitled to make voluntary disclosure for his income under the Scheme and the Authorities are not entitled to make any enquiry from the sources from where he has earned the income, but if it comes to the knowledge of the department that the higher amount is there, then Section 64 nowhere provides that the declaration relating to the extended income would also be taken to be correct. The assessee is only protected from disclosing the source of income, but as per the Scheme, the correct income is also liable to be disclosed.

9. So far, the violation of instruction number 1984 is concerned, the instructions came into operation w.e.f. 09.06.2000, but the notice had already been issued under Section 147 of the Income Tax Act, 1961, before



09.06.2000. After passing the final order, the petitioner shall have a remedy to file an appeal before the Commissioner of Appeals, and thereby, before the Central Board of Direct Taxes. Therefore, the petitioner is not remedyless, and even after the order passed by the CBDT, the petitioner can still approach the High Court. Hence, no case is made out to interfere with the impugned orders.

10. Accordingly, the present petition stands **dismissed**.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

Shivani