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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 5872/2001

CNR: RJHC020178602001 | URN: CW / 10505U / 2001

Mahesh Kumar Gupta S/o late Shri Ved Prakash Gupta aged about 47 years, R/o 211-212, Shalimar Complex, Church Road, Ajmer

----Petitioner

Versus

1. Union of India through the Joint Commissioner of Income Tax, Range-IV, Jaipur.
2. Shri R.A. Verma, Joint Commissioner of Income Tax, (Asstt), Special Range-II, Jaipur

----Respondents

For Petitioner(s)	:	Mr. Suresh Sahni with Ms. Neha Sahni Mr. R.M. Sharma
For Respondent(s)	:	Mr. Sandeep Pathak with Ms. Shefali Sharma-UOI

HON'BLE MR. JUSTICE ARUN MONGA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order(Oral)

21/08/2026

Per: Arun Monga, J.

1. The petitioner seeks quashing of the notices dated 13.07.2001 issued by the respondents under Section 148 of the Income Tax Act, 1961, for the Assessment Years 1995-96 to 1999-2000, by which reassessment proceedings were initiated against him. He also seeks quashing of the consequential proceedings arising therefrom.

2. On 16.02.2000 the respondents conducted a survey and physical verification of stock at the brick kiln of the petitioner, including bricks lying inside the kiln. By letter dated 18.02.2000

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the petitioner disputed the quantity recorded during the survey. He stated that stock was maintained only in respect of fully manufactured bricks removed from the kiln after baking. Reassessment proceedings under Sections 147 and 148 of the Act followed. Show cause notices were issued on 20.06.2000 and 18.07.2000, to which the petitioner submitted detailed replies dated 13.07.2000 and 16.08.2000. A penalty notice under Section 271B dated 16.07.2001 and a notice regarding prosecution under Section 277 dated 16.04.2001 were also issued. The petitioner replied to them on 31.08.2001 and 23.04.2001 respectively.

2.1 On 13.07.2001 notices under Section 148 were issued for the Assessment Years 1995-96 to 1999-2000, requiring the petitioner to furnish returns. It is the case of the petitioner that these notices were served on 31.07.2001, when respondent No. 2 was demitting office. By replies dated 21.08.2001 the petitioner disputed the reassessment proceedings. He sought their dropping, or in the alternative the supply of the reasons recorded for the belief that income had escaped assessment. Nothing was furnished to him.

2.2 Aggrieved by the notices under Section 148 and by the non supply of the recorded reasons, the petitioner has filed this writ petition challenging the reassessment proceedings on the grounds urged therein.

3. Learned counsel for the petitioner submit that the impugned notices dated 13.07.2001 are arbitrary, without jurisdiction and unsustainable in law. They submit that, despite repeated requests, the reasons said to have been recorded under Section 148(2) before issuance of the notices were never furnished to the

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petitioner. They further submit that the petitioner had fully disclosed all material facts for the Assessment Years 1995-96 to 1999-2000, and that there was no tangible material, and no live nexus with the earlier assessments made under Section 143(1)(a), to justify the formation of a belief that income had escaped assessment.

3.1 They further contend that the reassessment amounts to a mere change of opinion, particularly since the relevant material was already before the Assessing Officer. Concluded assessments could not be reopened under Section 148 in the absence of the statutory conditions and of the requisite satisfaction regarding escapement of income. According to them, the respondents have placed no material on record forming the basis of any such belief. The impugned notices and the consequential proceedings are therefore without jurisdiction and contrary to the statutory scheme.

3.2 Lastly, they contend that the impugned notices were actuated by mala fides on the part of respondent No. 2. It is alleged that respondent No. 2 obtained two truckloads of bricks from the petitioner in March 2000 against bills dated 17.03.2000 and 18.03.2000, that the bills remained unpaid, that he thereafter made demands in connection with the reassessment proceedings, and that he sought a luxury car for a proposed visit to Delhi. It is further alleged that, after the petitioner lodged a complaint with the Vigilance Department, respondent No. 2 expressed his displeasure to the chartered accountant of the petitioner, Shri B.K. Parwal. The sequence of events, according to learned counsel,

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shows that the power under Section 148 was exercised for an extraneous purpose and to bring pressure upon the petitioner.

4. Per contra, learned counsel for the respondents contend that the writ petition is premature and not maintainable. The impugned notices under Sections 147 and 148 merely initiate reassessment proceedings, and no final assessment order has been passed. They submit that the petitioner ought to participate in the proceedings, furnish the requisite books and material, and raise all his objections before the Assessing Officer, including after seeking the recorded reasons. They further submit that the matter turns on disputed questions of fact, and that the petitioner has adequate statutory remedies against any adverse assessment order.

4.1 They further contend that the Assessing Officer had tangible material to form the belief that income of the petitioner had escaped assessment. The survey conducted under Section 133A on 16.02.2000 at the business premises and brick kiln of the petitioner is said to have revealed excess stock of 19,16,084 bricks, discrepancies in the cash books, negative cash balances, and differences between the recorded and the actual sale rates. It is also said that the petitioner admitted undisclosed income during the survey. They further rely on discrepancies later noticed in the assessment records, including substantial breakage loss claims with incomplete supporting particulars, and the alleged transfer of refundable performance security of about Rs. 1.54 crore under the lease arrangement with M/s Kadamb Construction Ltd. into share capital. According to them, these circumstances formed the basis of the reasons recorded on 13.07.2001 for reopening the assessments, particularly as the earlier returns had only been

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processed under Section 143(1) and had never been subjected to scrutiny under Section 143(3).

4.2 Lastly, they submit that the allegations of mala fides against respondent No. 2 are baseless and have no bearing on the validity of the reassessment proceedings. The proceedings rest on the material gathered during the survey and on the subsequent examination of the assessment records, and not on any extraneous consideration. Respondent No. 2, moreover, no longer has jurisdiction over the petitioner. They further submit that the allegations concerning his conduct raise disputed questions of fact which cannot be adjudicated in a writ petition. They therefore contend that the notices were issued in accordance with Sections 147 and 148 of the Act.

5. We have heard learned counsel for both sides and perused the record.

6. At the outset, we may observe that the petition does level serious allegations. This was also noted by the learned Single Judge of this Court in the order dated 08.01.2008. By that order an interim stay was granted on further proceedings under the Income Tax Act proposed pursuant to the impugned notices.

7. The petition was instituted sometime in 2001, nearly 25 years ago. It has remained pending ever since, in the category of admitted matters awaiting hearing.

8. On the matter being taken for hearing, we find ourselves unable to effectively adjudicate the factual dispute pleaded in the petition. The allegations are, no doubt, supported by the affidavit of the petitioner. Even so, disputed questions of fact of this nature cannot be decided merely on the strength of self serving affidavits

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filed by the respective parties, nor by treating the allegations contained in them as gospel truth. The controversy would necessarily require examination and corroboration against the documentary evidence on record, and, if warranted, by recording the statements of the witnesses concerned.

9. We are conscious that the matter has remained pending before this Court for as many as 25 years. Mere delay in its disposal does not equip us to treat the material appended to the writ petition, together with the facts pleaded in it, which stand specifically disputed in the reply of the respondents, as the sole basis for rendering our opinion. To do so would carry the danger of bypassing the entire adjudicatory process envisaged under the Income Tax Act, which is a self contained code. It would at the same time deprive the revenue authorities of the opportunity to sift and examine the material on record in the manner required for a proper fact finding exercise.

10. We may further observe that the allegations of bias and prejudice levelled against the officials of the Revenue then in service do not, in any event, survive for consideration at this stage, having regard to the sheer efflux of time. Those officials have in all likelihood retired. Any of them who may still be in service would by now most probably have been transferred elsewhere, and would no longer be in a position to play any role in the matter.

11. In the totality of these circumstances, no prejudice would be caused to the petitioner if the disputed questions of fact are now adjudicated under the machinery provided by the Income Tax Act,

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RAJASTHAN HIGH COURT

by the officials presently in service who have jurisdiction over the matter.

12. Accordingly, we decline to interfere with the impugned notices and remit the matter to the competent authority. The petitioner is at liberty to respond to the notices in accordance with law, by filing his reply along with all supporting material.

Rajasthan High Court
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13. All issues and contentions raised in the writ petition are left open, to be considered and adjudicated by the Assessing Officer in accordance with law.

14. There are only two eventualities. Either the defence proposed to be raised by the petitioner is accepted, in which event nothing further will survive for consideration. Or an adverse view is taken, in which event the petitioner will have an adequate and efficacious remedy by way of a first appeal, and thereafter such further appellate remedies as may be available before the learned Tribunal in accordance with law.

15. With the aforesaid observations, the writ petition stands disposed of.

16. Pending application(s), if any, also stand disposed of.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

1/AARZOO/TUSHAR

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