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

Judgment reserved on: 09 September 2024
Judgment pronounced on:12 September 2024

+ W.P.(C) 2062/2023

JASWANT SINGH JUNEJA ..... Petitioner

Through: Mr. Gaurav Gupta and Mr. Jaspal Singh, Advs.

versus

INCOME TAX OFFICER, WARD-63(1), DELHI ..... Respondent

Through: Mr. Sanjay Kumar and Ms. Easha Kadian, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present writ petition has been filed for quashing/setting aside of the order under Section 148-A(d) and notice under Section 148 of the Income Tax Act, 1961 [**"Act"**], both dated 20.07.2022 (**'impugned order'** and **'impugned notice'**) respectively, whereby, the income of the petitioner is sought to be reassessed on the ground that petitioner has not substantiated the source of cash and credit deposit of Rs. 2,48,83,439/- during the Assessment Year [**"AY"**] 2014-15.

2. The principal challenge is to the initiation of reassessment in terms of a notice issued under Section 148 of the Act dated 20.07.2022 for the AY 2014-15. For the purpose of disposal of the present writ petition, we deem it apposite to take note of the following essential facts:-

3. Petitioner is the proprietor of M/s. JMK Enterprises, which is engaged in dealing in electronic goods and components. Petitioner filed its return of income for the AY 2014-15 on 29.11.2014, declaring a total income of Rs. 23,05,560/-.

4. Respondent No. 1 issued a notice under Section 148 dated 31.03.2021 proposing to assess/reassess the income of the petitioner. Petitioner filed his return of income in response to such notice along with copies of Trade and P&L Account and balance sheet of the Propitiatory Firm M/s. JMK Enterprises. After considering the submissions and the document placed on record by the petitioner, an Assessment Order under Section 147 dated 26.03.2022 came to be passed, accepting the submissions made by the petitioner.

5. On 31.05.2022, yet another notice under Section 148-A(b) purportedly in accordance with the judgment of the Supreme Court in **Union of India v. Ashish Agarwal (2023) 1 SCC 617**, came to be issued. Despite the fact that an order under Section 147 dated 26.03.2022 was already passed, respondent No. 1 passed an order under Section 148-A(d) on the same information which was the subject matter of the order passed under Section 147 dated 26.03.2022. Consequent to the aforesaid order, a notice under Section 148 of the Act came to be issued on 20.07.2022. Such order under Section 148-A(d) and the notice under Section 148 of the Act, both dated 20.07.2022, are subject matter of challenge in the present writ petition.

6. There is no dispute that the order under Section 148-A(d) and the notice under Section 148 of the Act, both dated 20.07.2022 for the AY 2014-15 are passed on identical facts as posed in the earlier

reassessment, which had preceded the proposed action for reassessment.

7. Obviously, in this case, the right of the respondent to reopen the concluded assessment is based on a perceived reading of the decision of the Supreme Court in Ashish Agarwal (supra), wherein, the Supreme Court proceeded to frame the following operative directions:

> "28. In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders [Ashok Kumar Agarwal v. Union of India, 2021 SCC OnLine All 799] passed by the High Court of Judicature at Allahabad in WT No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:
> 28.1. The impugned Section 148 notices issued to the respective assessees which were issued under unamended Section 148 of the IT Act, which were the subject-matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(b). The assessing officer shall, within thirty days from today provide to the respective assesses information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter.
> 28.2. The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148- A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.
> 28.3. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the assessing officers concerned to hold any enquiry, if required.
> 28.4. <u>The assessing officers shall thereafter pass orders in terms of Section 148-A(d) in respect of each of the assessees concerned; Thereafter after following the procedure as required under Section 148-A may issue notice under Section 148 (as substituted).</u>
> 28.5. All defences which may be available to the assessees including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assessees concerned and Revenue under the Finance Act, 2021 and in law shall continue to be available. The assessing officers shall thereafter pass orders in terms

> of Section 148-A(d) in respect of each of the assessees concerned; Thereafter after following the procedure as required under Section 148-A may issue notice under Section 148 (as substituted)."

8. While relying upon to the judgment of Ashish Agarwal (supra), learned counsel for the respondent has submitted that the assessment proceedings completed on 26.03.2022 in pursuance of notice under Section 148 of the Act dated 31.03.2021 had become void *ab initio* because the notice under Section 148 in the case of the assessee for the AY 2014-15 was digitally signed on 31.03.2021 but was sent and delivered to the portal of the assessee on 03.04.2021 and therefore said notice would be construed as a notice issued only on 03.04.2021 in terms of the judgment of the Supreme Court in the case of **Suman Jeet Agarwal v. Income Tax Officer 2022 SCC On Line Del. 3141**. It has been submitted that the decision in Ashish Agarwal's case (supra) is applicable to all the notices under Section 148 issued during the period 01.04.2021 to 30.06.2022, treating them to be the notices under Section 148-A(b) of the Act, and therefore, that being the reason, the assessment order arising out of the non-est notice under Section 148 would also be void and non-est.

9. Learned counsel for the petitioner, however, has argued that the impugned order and impugned notice have been issued ignoring the fact that assessment order under Section 147 dated 26.03.2022 was already passed and that the judgment of the Supreme Court cannot be applied in the present case where proceedings have already culminated in an order passed under Section 147 on merits.

10. The right of the respondent to reopen the concluded assessment on the basis of the decision of the Supreme Court in Ashish Agarwal

(supra) was the question which fell for our consideration in **Anindita Sengupta vs. Assistant Commissioner of Income Tax, Circle 61 (1) New Delhi & Ors. 2024 SCC On Line Del. 2296**, the observation of the Court in this case was as follows:-

> "23. As we read the penultimate directions which came to be framed, the procedure laid out in Ashish Agarwal clearly stood confined to matters where although notices may have been issued, proceedings were yet to have attained finality. This clearly flows from the impugned notices being ordained to be treated as show cause notices under Section 148A(b) and the concomitant liberty being accorded to AOs' to proceed further in accordance with Section 148A(d). As we read that decision, we find ourselves unable to construe those directions as either warranting or mandating a reopening of proceedings which had come to be rendered a quietus in the meanwhile. The judgment was primarily concerned with the validity of various notices which had been promulgated and proceedings drawn in accordance with the statutory procedure which stood in place prior to 01 April 2021. It also becomes pertinent to note that the decision rendered by our Court in Man Mohan Kohli perhaps constituted the solitary exception in the sense of having left a window open to the respondents to draw proceedings afresh. A majority of the High Courts', however, do not appear to have made such a provision or provide the Revenue with a right of recourse. The Supreme Court was thus faced with a peculiar and an unprecedented situation where the Revenue was rendered remediless to assess escaped income even though material may have merited such an action being pursued solely on account of a misinterpretation of the correct legal position. It was these factors which clearly appear to have weighed upon the Supreme Court to mould and sculpt a procedure which would strike a just balance between competing interests.
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> 24. In order to carve out an equitable solution which would redress the deadlock, the Supreme Court invoked its powers conferred by Article 142 of the Constitution and ordained that all such notices would be treated as being under Section 148A(b) and for proceedings to be taken forward in accordance with law thereafter. The direction so framed thus enabled the assessee to question the assumption of jurisdiction under Section 148 and take advantage of the beneficial measures embodied in Section 148 A. The assessee thus derived a right to assail the initiation of reassessment proceedings on jurisdictional grounds by preferring objections which the AO was statutorily obliged to take into consideration before

issuing notices under Section 148 of the Act. The Revenue on the other hand, and notwithstanding its folly of having erroneously proceeded under the erstwhile regime, was enabled to continue proceedings in accordance with the amended procedure as introduced by virtue of Finance Act, 2021 and thus avoid the specter of a fait accompli which it faced on account of some of the High Court decisions. This is apparent from the Supreme Court observing that the judgments rendered by some of the High Courts' had left the Revenue remediless and resulting in "no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147.

25. However, we are of the firm opinion that Ashish Agarwal neither intended nor mandated concluded assessments being reopened. The respondent clearly appears to have erred in proceedings along lines contrary to the above as would be evident from the reasons which follow. Firstly, Ashish Agarwal was principally concerned with judgments rendered by various High Courts' striking down Section 148 notices holding that the respondents had erred in proceeding on the basis of the unamended family of provisions relating to reassessment. They had essentially held that it was the procedure constructed in terms of the amendments introduced by Finance Act, 2021 which would apply. None of those judgements were primarily concerned with concluded assessments. It is this indubitable position which constrained the Supreme Court to frame directions requiring those notices to be treated as being under Section 148A(b) and for the AO proceeding thereafter to frame an order as contemplated by Section 148A(d) of the Act. The Supreme Court significantly observed that the High Courts' instead of quashing the impugned notices should have framed directions for those notices being construed and deemed to have been issued under Section 148A. Ashish Agarwal proceeded further to observe that the Revenue should have been "permitted to proceed further with the reassessment proceedings as per the substituted provisions……". Our view of the judgement being confined to proceedings at the stage of notice is further fortified from the Supreme Court providing in para 8 of the report that "The respective impugned Section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A of the Income Tax Act as substituted by Finance Act, 2021 and treated to be show cause notices in terms of Section 148A(b)." As would be manifest from the aforesaid extract, the emphasis clearly was on the notices which formed the subject matter of challenge before various High Courts' and the aim of the Supreme Court being to salvage the process of reassessment. This is further evident from the Supreme Court observing that the AO would thereafter proceed to pass orders

> referable to Section 148A(d). We consequently find ourselves unable to construe Ashish Agarwal as an edict which required completed assessments to be invalidated and reopened. Ashish Agarwal cannot possibly be read as mandating the hands of the clock being rewound and reversing final decisions which may have come to be rendered in the interregnum."

11. Admittedly, in this case, assessment proceedings had already concluded on 26.03.2022 and the reassessment action was reinitiated on the same set of reasons vide Show Cause Notice dated 31.05.2022 under Section 148-A(b), leading to the passing of an order under Section 148-A(d) and issuance of notice under Section 148 of the Act, both dated 20.07.2022.

12. In view of the position of law as enunciated in Anindita Sengupta (supra), we find ourselves unable to sustain the impugned action of reassessment.

13. The writ petition is accordingly allowed. The impugned order dated 20.07.2022 under Section 148-A(d) as well as consequential notice under Section 148 of the even date shall stand quashed.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

12 September, 2024
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