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

Judgment reserved on: 06 August 2024
Judgment pronounced on: 11 September 2024

+ W.P.(C) 12044/2022
SATISH CHAND JAIN ..... Petitioner

Through: Mr. Amol Sinha, Mr. Kshitiz Garg and Mr. Sourav Verma, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 52(1), DELHI & ANR. ..... Respondents

Through: Mr. Debesh Panda, SSC along with Ms. Zehra Khan, Mr. Vikramaditya, JSCs, Mr. Vineet Gupta, Mr. Ojaswa Pathak and Mr. Anauntta Shankar, 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. This writ petition has been preferred seeking the following reliefs:-

> "a) This Hon'ble Court be pleased to allow the present Writ Petition and pass a writ of certiorari setting aside the initiation of reassessment proceeding vide issuance of a notice u/s 148 of the Act dated 19.07.2022 and separate intimation dated 19.07.2022 bearing DIN & Notice No. ITBA/AST/S/91/2022-23/1043935162(1) for A.Y. 2014-15 pursuant to an order passed u/s 148(d) of the Act on 19.07.2022 by the Respondent No. 1 and to quash the subsequent proceeding thereto for the A.Y. 2014-15."

2. The challenge is essentially to the reassessment action in terms of notice issued under Section 148 of the Income Tax Act, 1961 **["Act"**] dated 19.07.2022 and which pertains to the assessment year **["AY"**] 2014-15. For the purpose of the instant writ petition, we deem it apposite to take note of the following essential facts:-

3. Petitioner filed his return for the AY 2014-15 on 30.09.2014, declaring total income of Rs. 2,29,80,740/-. The return was processed under Section 143(3) of the Income Tax Act. The case was assessed under Section 143(3) of the I.T. Act, 1961 at returned income of Rs. 2,29,80,740/- on 30.12.2016.

4. On the basis of an information received from the Investigation Wing, Mumbai that the assessee was the beneficiary of Rs. 3.07 crores through misusing the platform of NSEL Exchange by unscrupulous broker during the year under consideration, the case was reopened under Section 147 after obtaining the necessary approval from the concerned authority. Accordingly, notice under Section 148 of the Income Tax Act was issued on 31.03.2021 for the AY 2014-15 after recording the reasons that the income chargeable to tax has escaped assessment as per the provisions of Income Tax Act as they stood before 01.04.2021. The reassessment proceedings were concluded by computing the total assessed income as Rs. 5,43,20,297/- by making addition of the taxable income of Rs. 3,13,39,557/-.

5. Petitioner challenged the reassessment order dated 30.03.2022 before CIT (Appeals), which is pending adjudication.

6. On 02.06.2022, yet another Show Cause Notice [**"SCN"**] came to be issued proposing additions of income, based upon the same

reason that petitioner is the beneficiary of Rs. 3.07 crores through misusing the platform of NSEL by unscrupulous broker. While responding to the same, petitioner vide his reply dated 16.06.2022, raised various objections including that of limitation and asserting that the notice is *void ab initio* as the previous notice dated 31.03.2021 was served on 01.04.2021 which was not challenged before any Court. However, the objections came to be negated and final order under Section 148A(d) of the Act came to be passed on 19.07.2022 and consequent thereto, a notice under Section 148 of the Act was issued on 19.07.2022, which is the subject matter of challenge in the present writ petition.

7. Undisputedly, order under Section 148A(d) of the Act for the AY 2014-15 and the notice under Section 148 of the Act for the AY 2014-15 dated 19.07.2022 are based on identical facts as posed in the earlier reassessment and which had preceded proposed action for reassessment.

8. The right of the respondents to reopen the concluded assessment was ostensibly based on a perceived reading of the decision of the Supreme Court in **Union of India vs. Ashish Agarwal (2023) 1 SCC 617**. In this case, the Supreme Court held that a notice issued under Section 148 during the period beginning on 01.04.2021 and ending 30.06.2021 to be considered as a Show Cause Notice under Section 148A(b) of the Act. The Apex Court had held that the reassessment notice under Section 148 under the old law shall be deemed to be a Show Cause Notice under Clause (b) of Section 148-A of the new law substituted w.e.f. 01.04.2021. The learned counsel for the respondents

states that even though the assessment had already been made before 31.03.2022, notice issued under Section 148 was served upon the assessee from the system of the department on 01.04.2021. Relying on the decision of Ashish Agarwal, it is thus submitted that notice under Section 148-A(b) dated 02.06.2022, order under Section 148-A(d) and notice under Section 148 of the Act dated 19.07.2022 were in compliance with the orders of the Supreme Court.

9. Per contra, the learned counsel for the petitioner has submitted that formation of belief that income chargeable to tax has escaped assessment of Rs. 3.07 crores has attained finality by virtue of an order dated 30.03.2022 under Section 147 read with Section 144B of the Act and therefore the formation of belief for issuance of SCN under Section 148-A(b) of the Act that income chargeable to tax has escaped assessment on the same set of reasons without any change in facts and figures for re-initiation of reassessment proceeding vide impugned notice dated 19.07.2022 is invalid and *void ab initio*. Such initiation of reassessment proceedings will tantamount to double addition which is not permissible under the law. It has been further submitted that if the respondents had treated notice under Section 148 of the Act dated 31.03.2021 as served on 01.04.2021 and the reassessment proceedings were still pending, only in that eventuality, the present case would have got covered by the judgment of the Apex Court.

10. Notice under Section 02.06.2022 under Section 148-A(b) proceeds on the premise that the judgment of Supreme Court in Ashish Agarwal (supra) requires all notices issued under Section 148 of the Act between the period commencing from 01.04.2021 and ending on

30.06.2021 to be treated as SCNs referable to Section 148-A(b) of the Act. Dealing with an identical question of the right of the respondents to reopen the concluded assessment, based on perceived reading of the decision of the Supreme Court in Ashish Agarwal (supra) was the question which directly 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 Court observed as follows:-

> "21. It was in the aforesaid backdrop that the Supreme Court proceeded to frame the following operative directions: - .
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> 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:
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> 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.
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> 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.
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> 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. 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).

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).

29. The present order shall be applicable PAN INDIA and all judgments and orders passed by the different High Courts on the issue and under which similar notices which were issued after 1- 4-2021 issued under Section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that the present order shall also govern the pending writ petitions, pending before various the High Courts in which similar notices under Section 148 of the Act issued after 1-4-2021 are under challenge.

22. As is manifest from a reading of the aforesaid passages forming part of the decision in Ashish Agarwal, the Supreme Court was essentially concerned with the imperatives of striking a just balance between the right of the respondents to undertake and conclude a reassessment that may have been initiated while at the same time according due protection to the interest of the assessees. The Supreme Court held that although the High Courts were correct in taking the view that after the amendments in the Act, coming to be enforced with effect from 01 April 2021, notices could have been issued only in terms of the substituted provisions, the Department appeared to have proceeded under the mistaken yet bona fide belief that those amendments were yet to be enforced. It was in the aforesaid background that it found that the ends of justice would warrant the notices issued with reference to the

erstwhile provisions being saved and being read as referable to Section 148A(b). It was to subserve the aforesaid primary objective that Ashish Agarwal proceeded to hold that the impugned Section 148 notices would be deemed to have been issued under section 148A and treated to be show cause notices referable to clause (b) thereof.

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.

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.

> 26. Regard must also be had to the undisputed fact that the petitioner never questioned the validity of the original notices on grounds which were urged before the various High Courts and where assessees had questioned the invocation of the unamended provisions. The petitioner chose to contest the reassessment proceedings on merits. It is also admitted before us that the petitioner was also not a party to the Man Mohan Kohli batch of matters. There was therefore no justification for the respondent to have issued notices afresh seeking to reopen proceedings which had been rendered a closure prior to the judgment rendered in Ashish Agarwal. At the cost of being repetitive we deem it appropriate to observe that the Ashish Agarwal judgment neither spoke of completed assessments nor did it embody any direction that could be legitimately or justifiably construed as mandating completed assessments being reopened and moreso where the assessee had raised no objection to the initiation of proceedings."

11. Undisputedly and as admitted, the assessment proceedings in this case were already concluded on 30.03.2022 and reassessment action was re-initiated on the same set of reasons vide SCN dated 02.06.2022 under Section 148-A(b) leading to passing of an order Section 148-A(d) and notice under Section 148 of the Act dated 19.07.2022. In view of the position of law as enunciated in the case of Anindita Sengupta (supra), we find that there was no justification for the respondents to issue notices afresh seeking to reopen the proceedings which had been concluded prior to the judgment passed in Ashish Agarwal. The judgment passed in Ashish Agarwal does not mandate the completed assessment being reopened. We are therefore unable to sustain the impugned action for reassessment.

12. The writ petition is accordingly allowed. The impugned order dated 19.07.2022 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.

11 September, 2024/*RM*