GAHC010293792023

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./68/2024

UNION OF INDIA
THROUGH THE SECRETARY MINISTRY OF FINANCE DEPTT. OF REVENUE
HAVING ITS OFFICE AT THE CENTRAL SECRETARIAT NORTH BLOCK NEW DELHI-110001

2: INCOME TAX OFFICER
W-1 SILCHAR
HAVING HIS OFFICE AT AAYKAR BHAWAN PWD ROAD
SILCHAR
ASSAM-788001

3: PRINCIPAL COMMISSIONER OF INCOME TAX
SHILLONG
HAVING HIS OFFICE AT AAYKAR BHAWAN MAHATMA GANDHI ROAD
SHILLONG MEGHALAYA-793001

4: NATIONAL FACELESS ASSESSMENT CENTRE. DELHI
HAVING ITS OFFICE AT 2ND FLOOR
JAWAHARLAL NEHRU STADIUM DELHI-110003
VERSUS

SUNIL MOHTA
S/O KISHAN LAL MOHTA HAVING HIS RESIDENCE AT JANIGANG BAZAR
SILCHAR
CACHAR-788001

Advocate for : MR. S C KEYAL
Advocate for : appearing for SUNIL MOHTA

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

16.12.2024

1. Mr. S.C. Keyal, learned counsel appears for the review petitioner. No one appears for the respondent/writ petitioner, even though notices have been issued twice.

2. As per the Office Note, service report has not been received from the respondent no.1. However, in view of the fact that 30 days have lapsed from the date of issuance of the second notice, notice is deemed to be served upon the respondent no.1, in terms of Section 27 of the General Clauses Act.

3. The review petitioner's counsel submits that the impugned order dated 21.11.2022 passed in WP(C) 7116/2002 should be reviewed, in view of the fact that the judgment of the Supreme Court in the case of ***Union of India & Others vs. Ashish Agarwal***, reported in ***AIR 2022 SC 2781,*** had been wrongly applied while disposing of the case.

4. The review petitioner's counsel submits that the decision of the Supreme Court in ***Ashish Agarwal (supra)*** is not applicable to the instant case, as the notice issued to the respondent under Section 148 of the Income Tax Act, 1961 had been issued on 31.03.2021, i.e. within the time limit. He submits that the decision of the Supreme Court would only be applicable in respect of proceedings relating to past assessment orders, provided that the notice issued

under Section 148 of the Income Tax Act had been issued on or after 1st April, 2021.

5. I have heard the learned counsel for the review petitioner.

6. On perusing the impugned order dated 21.11.2022, this Court finds that the writ petition had been disposed of, in terms of the judgment of the Supreme Court in ***Ashish Agarwal (supra)*** and Instruction No.01/2022 dated 11.05.2022 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section. However, in the case before this Court, the notice had been issued under Section 148 of the Income Tax Act on 31.03.2021 and the same is not in consonance with the decision of the Supreme Court in ***Ashish Agarwal (supra)***, wherein it has been held that the benefit of the new provisions of the Income Tax Act would be made available in respect of proceedings relating to past assessment orders, provided the Notice under Section 148 of the Income Tax Act had been issued on or after 1st April, 2021. The same has also been reiterated in another Supreme Court judgment passed in the case of ***Union of India & Others vs. Rajeev Bansal***, reported in ***2024 0 Supreme(SC) 854***.

7. In view of the above reasons, this Court is of the view that the review petitioner has made out a case of review of the impugned order dated 21.11.2022 passed in WP(C) 7116/2002. The impugned order dated 21.11.2022 passed in WP(C) 7116/2002 is accordingly recalled and the writ petition is restored to file.

8. The review petition is accordingly allowed. List the writ petition after the vacation.

JUDGE

Comparing Assistant