12-05-2022
Item No.64-68
Subrata

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.2566 of 2022
Sushil Kumar Prahaladka (HUF)
-vs-
Union of India & Ors.
with
WPA No.2570 of 2022
with
WPA No.2571 of 2022
with
WPA No.2576 of 2022
and
WPA No.2580 of 2022

Mr. Sutirtha Das ...for the petitioners

Mr. Tilak Mitra ...for the respondents

Supplementary affidavits filed be taken on record.

Heard learned advocates appearing for the respective parties.

In these writ petitions, petitioners have challenged the impugned notice under section 148 of the Income Tax Act, 1961 (old Act) which was issued post-31st March 2021 by contending that the present case should be governed by the newly amended provisions relating to proceeding under section 147 of the Income Tax Act, 1961 and the formalities of which has not been observed and complied with, and as such, the same is bad in law.

Taking note of the recent judgement of the Hon'ble **Supreme Court** dated **May 4, 2022** in the case of **Union of India & Ors. v. Ashish Agarwal** passed in **Civil Appeal No.3005 of 2022** and in view of the guidelines and law laid down in the aforesaid judgement of the Hon'ble Supreme Court, and particularly taking note of **paragraphs 10, 11 and 12** of the aforesaid judgement which are quoted below, I am not inclined to entertain these writ petitions.

"10. In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgements and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:–

(i) 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 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(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 01.04.2021 till date, including those which have been quashed by the High Courts.

Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

(iii) The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assessees; Thereafter after following the procedure as required under section 148A may issue under section 148 (as substituted);

(iv) 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 concerned assessees and Revenue under the Finance Act, 2021 and in law shall continue to be available.

11. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 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 present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge.

12. The impugned common judgments and orders passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts, more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only."

Accordingly, these writ petitions – **WPA No.2566 of 2022, WPA No.2570 of 2022, WPA No.2571 of 2022, WPA No.2576 of 2022 and WPA No.2580 of 2022** – are dismissed. The assessing officer concerned shall proceed with the impugned reassessment proceedings in accordance with the guidelines and law laid down in the aforesaid judgement of the Hon'ble Supreme Court.

[Md. Nizamuddin, J]