

07-04-2022
Item No.29
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.5892 of 2022
Finestar Consultancy Private Limited
-VS-
Income Tax Officer, Ward No.7(1), Kolkata & Ors.

Mr. Avra Mazumder
Sk. Md. Bilwal Hossain
Mr. Kaushey Roy ...for the petitioner

Learned advocate for the petitioner is present and files affidavit of service.

None appears on behalf of the respondents even at the second call. **Mr Amit Sharma**, learned advocate who generally appears for the department, is present in court, who will appear in this matter for the respondents and his appearance may be regularised.

Learned advocate for the petitioner shall serve a copy of the writ petition upon Mr Sharma.

Heard learned counsels appearing for the respective parties.

Petitioner is aggrieved by the issuance of impugned notice under section 148 of the Income Tax Act, 1961 on the grounds that the same is barred by limitation and that the respondent-income tax authority concerned, before issuing the impugned notices under section 148 of the Income Tax Act, 1961 have not observed the statutory formalities under section 148A of the 1961 Act as prescribed by the Finance Act, 2021 which are applicable with effect from 1st April 2021 before issuance of notices under section 148 of the 1961 Act on or after 1st April 2021.

Issues arising in the present writ petition is purely legal, and in this writ petition the assessee/petitioner has sought relief of quashing of the impugned re-assessment notice issued post-31st March 2021 by the respondent-income tax authority concerned under section 148 of the Act, assessee/petitioner has also sought relief by way of a declaration declaring Explanations A(a)(ii)/A(b) to the Notification No.20 [S.O. 1432(E)] dated 31st March 2021 and Notification No.38 [S.O.1703(E)] dated 27th April 2021 to the extent that the same extend the applicability of the “provisions of section 148, section 149 and section 151 of the Act, as the case may be, as they stood as on the 31st March 2021, before the commencement of the Finance Act, 2021” to the period beyond 31st March 2021 as ultra vires the parent legislation, viz., the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as the ‘Relaxation Act, 2020’).

At the outset, all the counsel appearing for the parties jointly submitted that the issues involved in this writ petition is covered by a decision of the Division Bench of the Allahabad High Court dated September 30, 2021 in the case of *Ashok Kumar Agarwal v. Union of India through its Revenue Secretary North Block & Ors.* (Writ Tax No.524/2021) decided in favour of the assessee/petitioner and an order of Rajasthan High Court dated November 25, 2021 in the case of *Bpip Infra Private Limited v. Income Tax Officer, Ward 4(1), Jaipur* (S.B. Civil Writ Petition No. 13297/2021) and also an order of Delhi High Court dated December 15, 2021 in the case of *Man Mohan Kohli v. Assistant Commissioner of Income Tax & Anr.* [W.P.(C) 6176 of 2021] and the judgement and order of this court dated January 17, 2022 in the case of *Manoj Jain v. Union of India & Ors.* (WPA No.11950 of 2021) and in the case of *Bagaria Properties and Investment Private Limited & Anr.* (WPO No.244 of 2021).

In view of the judgement and order of this court dated January 17, 2022 in the case of *Manoj Jain v. Union of India & Ors.* in WPA No.11950 of 2021 and in the case of *Bagaria Properties and Investment Private Limited & Anr.* (WPO No.244 of 2021), this writ petition being **WPA No.5892 of 2022 is disposed of** by allowing the same. Explanations A(a)(ii)/A(b) to the Notifications dated 31st March 2021 and 27th April 2021 are declared to be ultra vires the Relaxation Act, 2020 and are, therefore, bad in law and null and void.

Accordingly, the impugned notice under section 148 of the Income Tax Act, 1961 is quashed with liberty to the assessing officers concerned to initiate fresh re-assessment proceedings in accordance with the relevant provisions of the Act as amended by the Finance Act, 2021 and after making compliance of the formalities as required by the law.

This writ petition is allowed subject to payment of costs of Rs.5,000/- to the High Court Legal Services Committee, since the impugned notice under section 148 of the Income Tax Act, 1961 has been issued on April 8, 2021 as appears from record and this writ petition has been filed in March 2022, that is, almost after ten months from receipt of the impugned notice, without any explanation for such delay in filing this writ petition. Such costs has to be paid by the petitioner to the High Court Legal Services Committee within seven days from date which is to be utilised by it for the welfare of street children. Receipt of payment is to be produced before this court.

List this writ petition under the heading “To Be Mentioned” on April 21, 2022 for compliance.

[Md. Nizamuddin, J]

