

26-04-2022
Item No.24
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.7000 of 2022
Subir Saha
-VS-
Union of India & Ors.

Mr. Rites Goel ...for the petitioner

Mr. Prithu Dudhoria ...for the respondents

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.

Though it appears from the impugned notice that it has been signed on March 31, 2021, but from the copy of the e-mail received by the petitioner (p.43), the date and time appears as April 1, 2021 at 6.54 a.m. and that should be treated as the time of issuance of notice; and if the date of issuance of notice is post-31st March 2021, then the proceeding governs under the amended provisions relating to section 147 of the Income Tax Act, 1961.

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.7000 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 1, 2021 as appears from record and this writ petition has been filed in April 2022, that is, almost after eleven 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 benefit and welfare of the children staying with their parents in the correctional home in West Bengal. Receipt of payment is to be produced before this court.

List this writ petition under the heading “To Be Mentioned” on May 5, 2022 for compliance.

[Md. Nizamuddin, J]