

05-05-2022
Item No.3-12
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.5778 of 2022

Sudha Agarwal

-vs-

Income Tax Officer, Ward No.1(1), Kolkata & Ors.

with

WPA No.6025 of 2022

with

WPA No.6585 of 2022

with

WPA No.6651 of 2022

with

WPA No.6662 of 2022

with

WPA No.7000 of 2022

with

WPA No.7112 of 2022

with

WPA No.7233 of 2022

with

WPA No.7235 of 2022

and

WPA No.7237 of 2022

Mr. Avra Mazumder
Sk. Md. Bilwal Hossain
Mr. Binayak Gupta
Mr. K. Roy
Mr. Rites Goel
Ms. Amami Kayan
Mr. Zubeen Pandey
Mr. Vevek Murarka
Mr. D.N. Dey

...for the petitioners
(in all WPAs)

Mr. Om Narayan Rai
Mr. Prithu Dudhuria
Mr. Somen Bhattacharjee

...for the respondents
(in all WPAs)

In compliance of my earlier orders, petitioners in these writ petitions have paid the costs and filed receipts,

which are taken on record.

Taking note of a judgement of the **Hon'ble Supreme Court** dated **May 4, 2022** in the case of **Union of India & Ors. v. Ashish Agarwal** in **Civil Appeal No.3005 of 2022**, it is clarified that by the earlier orders of this court, the impugned notices under section 148 of the Income Tax Act, 1961 and all proceedings under section 147 of the old Act, which were quashed with liberty to the assessing officer concerned to proceed in accordance with law, would now mean as per the law and guidelines laid down in the aforesaid judgement of the Hon'ble Supreme Court.

Paragraphs 10, 11 and 12 of the aforesaid judgement of the Hon'ble Supreme Court, which, according to me, have much relevance, are quoted below:–

“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 assesseees 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 assesseees information and material relied upon by the Revenue, so that the assesseees 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 assessee; 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 assessee including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessee 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, the respondent-assessing authorities concerned will now proceed with those quashed notices and proceedings in accordance with the law laid down and guidance as per aforesaid order of the Hon'ble Supreme Court.

The Registrar General of this court shall forward a copy of this order to the Principal Chief Commissioner of Income Tax, West Bengal and Sikkim who will circulate the same to all the concerned subordinate authorities.

[Md. Nizamuddin, J]