18-05-2022
Item No.5
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IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.7196 of 2022
Pushpanjali Commotrade Private Limited
-vs-
Union of India & Ors.

Mr. Avra Mazumder,
Sk. Md. Bilwal Hossain,
Mr. B. Gupta
...for the petitioner.

Mr. Aryak Dutta
... For the Union of India.

In compliance of my earlier orders, petitioner in this writ petition has paid the costs and filed receipts, which are taken on record.

Taking note of recent 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 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, the respondent-assessing authorities concerned will now proceed with those quashed notices and proceedings in accordance with the guideline and law laid down in the aforesaid judgment of the Hon'ble Supreme Court.

[Md. Nizamuddin, J]