

20.07.2022.
p.b.
Sl. No.3.

W.P.A. 13450 of 2022

Mousumi Majumder
Vs.
Income Tax Officer,
Ward 49(1), Kolkata & Ors.

Mr. Avra Mazumder,
Mr. Binayak Gupta,
Ms. Megha Agarwal,
Mr. Akash Kapoor.

.....for the petitioner.

Mr. Tilak Mitra.

.....for the respondent.

Heard learned advocates appearing for the
respective parties.

By this writ petition, petitioner has 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 have 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 this 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 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 assesseees; 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 assesseees including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assesseees 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, this writ petition being WPA No.13450 of 2022 is 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.)