

ORDER SHEET  
WPO/1666/2022  
IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE

NIGHTBIRD PROPERTIES PVT LTD  
VS  
UNION OF INDIA AND ORS.

BEFORE:  
The Hon'ble JUSTICE MD. NIZAMUDDIN  
Date : 30<sup>th</sup> March, 2022.

Appearance:  
Ms. Swapna Das, Adv.  
Mr. Siddharth Das, Adv.  
...For the Petitioner  
  
Mr. Prithu Dudhuria, Adv.  
...For the U.O.I.

The Court : Heard Learned Counsels appearing for the parties.

Petitioner is aggrieved by the issuance of impugned notice under Section 148 of the Income Tax Act, 1961 on the ground that the same is barred by limitation and the respondent Income Tax Authority concerned, before issuing the impugned notices under Section 148 of the Income Tax Act, have not observed the statutory formalities under Section 148 A of the Income Tax Act as prescribed by the Finance Act, 2021 which are applicable with effect from 1<sup>st</sup> April, 2021 before issuance of notices under Section 148 of the Act on or after 1<sup>st</sup> 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 31<sup>st</sup> March, 2021

by the respondent Income Tax Authority concerned under Section 148 of the Income Tax 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 31<sup>st</sup> March, 2021 and Notification No. 38 [S.O.1703 (E)] dated 27<sup>th</sup> 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 31<sup>st</sup> March, 2021, before the commencement of the Finance Act, 2021” to the period beyond 31<sup>st</sup> 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 ‘Relaxation Act, 2020’).

At the outset, both the counsel appearing for the parties jointly submitted that the issues involved in this Writ Petition is covered by the decision of the Division Bench of the Allahabad High Court dated 30<sup>th</sup> September, 2021 in the case of ‘Ashok Kumar Agarwal –vs- Union of India through its Revenue Secretary North Block & Ors.’ (Writ Tax No. 524/2021) decided in favour of assessee/petitioner on 30.09.2021 and order of Rajasthan High Court dated 25<sup>th</sup> November, 2021 in the case of Bpip Infra Private Limited-vs.- Income Tax Officer, Ward 4 (1), Jaipur (S.B. Civil Writ Petition No. 13297/2021) and the order of Delhi High Court 15<sup>th</sup> December, 2021 in the case of Man Mohan Kohli –vs- Assistant Commissioner of Income Tax & Anr. In (W.P. (C) 6176 of 2021) and judgement and order of this Court dated 17<sup>th</sup> January, 2022 in the case of Manoj Jain Vs. Union of India & Ors. In WPA No.

11950 of 2021 and in the case of Bagaria Properties and Investment Private Limited & Anr. In WPO 244 of 2021.

In view of judgment and order of this Court dated 17<sup>th</sup> January, 2022 in the case of Manoj Jain Vs. Union of India & Ors. In WPA No. 11950 of 2021 and in the case of Bagaria Properties and Investment Private Limited & Anr. in WPO No. 244 of 2021, this Writ Petition being **WPO No.1666/2022** 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, impugned notice under Section 148 of the Income Tax Act 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 Finance Act, 2021 and after making compliance of the formalities as required by the law.

This writ petition is being entertained subject to payment of cost of Rs. 5000/- to the Calcutta High Court Bar Association Lawyers' Benevolent Fund since the impugned notice under Section 148 of the Income Tax Act, 1961, has been issued on 13<sup>th</sup> April, 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 cost has to be paid by the petitioner to the Calcutta High Court Bar Association Lawyers' Benevolent Fund within seven days from

date. Payment receipt is to be produced by the petitioner before this Court.

List this matter as “To be Mentioned” on 12<sup>th</sup> April, 2022 for compliance.

Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)