IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Mr. Justice Md. Nizamuddin

W.P.O. No. 2086 of 2022

EAST INDIA PARIVAHAN PVT LTD
Vs.
UNION OF INDIA AND ORS.

With

W.P.O. No. 2087 of 2022, W.P.O. No. 2088 of 2022, W.P.O. No. 2089 of 2022, W.P.O. No. 2090 of 2022, W.P.O. No. 2091 of 2022, W.P.O. No. 2092 of 2022, W.P.O. No. 2094 of 2022, W.P.O. No. 2096 of 2022, W.P.O. No. 2097 of 2022, W.P.O. No. 2098 of 2022, W.P.O. No. 2099 of 2022, W.P.O. No. 2100 of 2022, W.P.O. No. 2101 of 2022, W.P.O. No. 2102 of 2022, W.P.O. No. 2103 of 2022, W.P.O. No. 2109 of 2022, W.P.O. No. 2110 of 2022, W.P.O. No. 2111 of 2022, W.P.O. No. 2112 of 2022, W.P.O. No. 2113 of 2022, W.P.O. No. 2114 of 2022, W.P.O. No. 2115 of 2022, W.P.O. No. 2116 of 2022, W.P.O. No. 2119 of 2022, W.P.O. No. 2122 of 2022, W.P.O. No. 2126 of 2022, W.P.O. No. 2127 of 2022, W.P.O. No. 2128 of 2022, W.P.O. No. 2129 of 2022, W.P.O. No. 2130 of 2022, W.P.O. No. 2131 of 2022, W.P.O. No. 2132 of 2022, W.P.O. No. 2133 of 2022, W.P.O. No. 2134 of 2022, W.P.O. No. 2135 of 2022, W.P.O. No. 2136 of 2022, W.P.O. No. 2138 of 2022, W.P.O. No. 2139 of 2022, W.P.O. No. 2140 of 2022, W.P.O. No. 2141 of 2022, W.P.O. No. 2152 of 2022, W.P.O. No. 2153 of 2022, W.P.O. No. 2155 of 2022, W.P.O. No. 553 of 2022, W.P.O. No. 1330 of 2022, W.P.O. No. 1922 of 2022, W.P.O. No. 2074 of 2022

For the Petitioners :-

Ms. Swapna Das, Mr. Siddharth Das, Mr. Dipayan Kundu, Mr. Brijesh Kumar Singh, Mr. Hemant Tiwari, Mr. Anurag Bagaria, Mr. Bikash Kumar Roy, Mr. Arvind Agarwal, Mr. Farhan Ghaffar, **Advocates**

For the Respondents :-

Mr. Smarajit Roy Chowdhury, Mr. Soumen Bhattacharjee, Mr. Om Narayan Rai, Mr. Aryak Dutt, Mr. Prithu Dudhoria, Ms. Smita Das De, Mr. Amit Sharma, Mr. Vipul Kundalia, **Advocates**

Dated : 10th May, 2022

MD. NIZAMUDDIN, J.

Heard learned advocates appearing for the parties.

Affidavits of service filed in Court be kept with the records.

In these writ petitions, petitioners have challenged the impugned notices under Section 148 of the Income Tax Act, 1961 (Old Act) which were issued after 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 are bad in law.

Taking note of the recent judgment 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** 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 hereinbelow, I am not inclined to entertain these 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 assesses 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 assesses information and material relied upon by the Revenue, so that the assesses 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 asessees; 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 judgements 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 judgements 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 judgements and orders passed by the High Court of Allahabad and the similar judgements and orders passed by various High Courts, more particularly, the respective judgements and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only."

Accordingly, these writ petitions are dismissed and the Assessing Officer concerned will proceed with the impugned re-assessment proceeding in accordance with the guidelines and law laid down by the Hon'ble Supreme Court in the aforesaid judgment.

(Md. Nizamuddin, J.)

TR/