

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

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

W.P.O. No. 2106 of 2022

MERRINO INDUSTRIES LIMITED

Vs.

THE ASSISTANT COMMISSIONER OF INCOME
TAX CIRCLE-11(1), KOLKATA AND ORS.

With

W.P.O. No. 2120 of 2022, W.P.O. No. 2143 of 2022, W.P.O. No. 2144 of 2022, W.P.O. No. 2145 of 2022, W.P.O. No. 2146 of 2022, W.P.O. No. 2147 of 2022, W.P.O. No. 2149 of 2022, W.P.O. No. 2150 of 2022, W.P.O. No. 2151 of 2022,

For the Petitioners :-

Mr. Shubradip Roy, Mr. Falguni Rambhasha, Mr. Pourush Bandyopadhyay, Mr. Abhra Jena, Mr. Bimalendu Das, Mr. Shomrik Das, Ms. Swapna Das, Mr. Siddharth Das, Mr. A.K. Upadhyay, Mr. R.K. Choudhury, **Advocates**

For the Respondents :-

Ms. Smita Das De, **Advocate**

Dated : 11th 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 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 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.)

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