AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1608 of 2022

STALCO CONSULTANCY & SYSTEMS PRIVATE LIMITED	....	***Petitioner***

-versus-

Principal Commissioner of Income Tax, Bhubaneswar-1 and another	....	***Opposite Parties***

Advocates appeared in the cases:

For Petitioner	:	Mr. Sidhartha Ray Advocate
For Opposite Parties	:	None

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

JUDGMENT
01.11.2022

Dr. S. Muralidhar, CJ.

1. The challenge in the present writ petition is to the notices dated 31st March, 2021, 1st April, 2021 and 5th April, 2021 issued by the Income Tax Department (Department) under Section 148 of the Income Tax Act, 1961 ('Act') seeking to reopen the assessment of the Petitioner for the Assessment Year (AY) 2013-14.

2. At the outset, an interesting fact that requires to be noted is that all the above three impugned notices pertain to the same AY

2013-14. The second fact is that the notice dated 1st April and 5th April, 2021 were issued without withdrawing the first notice dated 31st March, 2021.

3. Sections 147 to 151 of the Act underwent amendments under the Finance Act, 2021 with effect from 1st April, 2021. Section 149 of the Act which specified the time limit for issuance of such notice, as it stood prior to 1st April 2021 reads as under:

"**Section-149 Time Limit for notice**

> (1) No notice under section 148 shall be issued for the relevant assessment year -
>
> (a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c)
>
> (b) if four years but not more than six years have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year."

4. In the present case, the outer time limit of six years lapsed on 1st April, 2020 whereas the first of the impugned notices was issued only on 31st March, 2021.

5. However, to overcome this plea of limitation, the Department in its counter affidavit has relied on the provisions of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (the 2020 Act) and to the Explanation added by the Central Board of Direct Taxes (CBDT) notification

dated 27th July 2021. It is sought to be contended that by two successive notifications of the CBDT, the time limit for issuance of the notices under Section 148 of the Act was first extended to 30th April, 2021 and then to 30th June, 2021.

6. As regards the subsequent notices dated 1st April, 2021 and 5th April, 2021, in answer to the contention of the Petitioner that those notices are bad in law on account of non-compliance with the mandatory requirements under Section 148-A of the Act, the Department has contended that the question of complying with the said provision does not arise in view of the extension of the time limit by virtue of the 2020 Act of the initial notice issued on 31st March, 2021.

7. The admitted position is that as far as the notices dated 1st April, 2021 and 5th April, 2021 are concerned, they are bad in law for non-compliance with the mandatory requirements of prior enquiry by the Assessing Officer (AO) in terms of Section 148-A of the Act. Those notices are accordingly quashed.

8. As regards the first notice dated 31st March, 2021, it is seen from the text of the notice itself that it has been issued more than six years after the closure of the relevant AY on 1st April, 2020 and therefore exceeds the time limits set under Section 149 of the Act. That period has not got extended by the 2020 Act. This was explained by the Supreme Court of India while interpreting the amended provisions in ***Union of India v. Ashish Agarwal AIR***

2022 SC 2781. The Supreme Court made a distinction between notices issued on or after 1st April, 2021 and those issued prior thereto. It permitted the proceedings pursuant to notices issued on or after 1st April, 2021 to continue in terms of the amended provisions even while clarifying that the notices issued prior thereto, would have to abide by the provisions as they exist prior to the amendment.

9. In the meanwhile, this Court had in an order dated 24th January, 2022 in W.P.(C) No.20919 of 2021 and batch (***M/s. Ambika Iron and Steel Pvt. Ltd. v. Principal Commissioner of Income Tax***) quashed notices issued prior to 1st April, 2021 which was beyond the period of six years after the expiry of the AY in question.

10. Thereafter, in an order dated 6th May, 2022 in W.P.(C) No.11181 of 2022 (***Nutan Bhusan Jena v. The Principal Commissioner of Income Tax, Bhubaneswar-1***), this Court relied on the Supreme Court judgment in ***Union of India v. Ashish Agarwal*** (*supra*) and quashed notices under Section 148 of the Act which were issued prior to 1st April, 2021 but beyond the period of six years after the expiry of the relevant AY.

11. Following the above orders, as far as the present case is concerned, inasmuch as the impugned notice dated 31st March, 2021 seeking to reopen the assessment for the AY 2013-14 was issued more than six years after the end of the relevant AY, it is hereby quashed.

12. It is clarified that it will be open to the Department to initiate fresh proceedings under Section 147 of the Act against the Petitioner subject to complying with the legal requirements in terms of the amended Sections 147 to 151 as per the Finance Act, 2021.

13. The writ petition is disposed of in the above terms but, in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera/ Jr. Steno.