IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.4496 of 2022 and two others

AMBER NX, Cuttack
(In W.P.(C) No.4496 of 2022)

Ritu Agrawal .... ***Petitioners***
(In W.P.(C) No.4497 of 2022)

Stewart Science College, Cuttack
(In W.P.(C) No.4498 of 2022)

Mrs. Kananbala Roychoudhury Advocate

-versus-

DCIT, Circle-1(1), Cuttack and another
(In W.P.(C) No.4496 of 2022)

.... ***Opposite Parties***

ITO, Ward 1, Cuttack and another
(In W.P.(C) Nos.4497 and 4498 of 2022)

Mr. R.S. Chimanka, Sr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
14.02.2022

Order No.

01. 1. These matters are taken up by a separate notice.

2. Learned counsel for the Petitioners states that since the present writ petitions are similar to W.P.(C) No.20919 of 2021 and batch of writ petitions, which were allowed on 24th January 2022, the same may be allowed in terms thereof.

3. Mr. R. S. Chimanka, learned Senior Standing Counsel for the Department does not object to the same.

4. In each of these cases, the challenges to a notice issued by the Income Tax Department (hereinafter 'Department') under Section 148 of the Income Tax Act, 1961 (IT Act) as it stood prior to the amendment by the Finance Act of 2021 with effect from 1st April, 2021. In other words, in each of these cases, the notice under Section 148 of the IT Act has been issued prior to 1st April, 2021. In these writ petitions, in fact, the date of the notice is 31st March, 2021.

5. In each of these cases, the relevant assessment year (AY) in relation to which such notice has been issued is more than four years prior to the date of reopening i.e. it is beyond four years from the expiry of the AY in question and is clearly therefore, time barred in terms of the first proviso to Section 147 of the IT Act.

6. The stand of the Revenue that in view of the notifications issued by the Central Government in terms of the provisions of the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the said time limits stood extended, is clearly untenable as those notifications were issued to deal with the situation arising from the amendment to the IT Act by the Finance Act, 2021 with effect from 1st April, 2021 whereas in these cases the notices were issued prior to 1st April, 2021.

7. This Court had an occasion in similar circumstances to quash an identical notice under Section 148 of the IT Act by its order dated 20th November, 2019 in W.P.(C) No.7618 of 2009 and that order

stood confirmed by this Court by the dismissal of the Department's review petition i.e. RVWPET No.188 of 2020 by the order dated 3rd December, 2021 which reads as under:

> "1. Although the point made by the Revenue in this review petition is that this Court in its order dated 20th November, 2019 erred in drawing a distinction between an Additional Commissioner and Commissioner in terms of their authority, the point involved was that for the purpose of Section 151(1) of the Income Tax Act, 1961since the reopening of the assessment was beyond 4 years, it had to have the prior approval of the Commissioner of Income Tax, and there was no such approval in the present case.
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> 2. Consequently, no ground is made out for reviewing the order dated 20th November, 2019 in W.P.(C) No.7618 of 2009.
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> 3. The review petition is dismissed."

8. Indeed in the notice issued under Section 148 of the IT Act on 31st March, 2021 which has been challenged in W.P.(C) No.41826 of 2021, it has been stated that the notices had been issued after obtaining "necessary satisfaction of the Jt. CIT Range-I, Cuttack" whereas the Officer authorized to record the necessary satisfaction had to be the Chief Commissioner of Income Tax / Commissioner of Income Tax.

9. For all the aforesaid reasons, in each of the above cases, the impugned notice under Section 148 of the IT Act is hereby quashed. The writ petitions are allowed, but in the circumstances, with no order as to costs.

10. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda