AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos. 38822 and 38823 of 2021

M/s. SYLVESA INFOTECH PRIVATE LIMITED	....	***Petitioner***

-versus-

Additional Commissioner of Income Tax, Range-I, Bhubaneswar 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. Both these writ petitions are by the same Petitioner questioning the notices dated 31st March, 2021 and 8th April, 2021 issued to the Petitioner under Section 148 of the Income Tax Act, 1961 (Act) for two different Assessment Years (AYs).

2. While W.P.(C) No.38823 of 2021 pertains to the AY 2015-16, W.P.(C) No.38822 of 2021 pertains to the AY 2016-17. As far as the AY 2015-16 is concerned, initially a notice dated 31st March,

2021 was issued seeking to reopen the assessment for the AY 2015-16. This was after the expiry of four years from the end of the relevant AY. The notice recorded that it was being issued "after obtaining the necessary satisfaction of the Additional CIT, Range-1, Bhubaneswar".

3. As far as the AY 2016-17 is concerned, a similar notice dated 31st March, 2021 was issued again recording the necessary satisfaction of the Additional CIT, Range-1, Bhubaneswar.

4. Sections 147 to 151 of the Act stood amended by virtue of the Finance Act, 2021 with effect from 1st April, 2021. Following this, the Department issued a second set of notices dated 8th April, 2021 for both the AYs again recording the necessary satisfaction of the Additional CIT, Range-1, Bhubaneswar.

5. An important fact to be noted is that the subsequent notice dated 8th April, 2021 does not cancel the earlier notice dated 31st March, 2021, although it was for the same AY. This fact has not been disputed by the Department in its counter affidavit.

6. The grounds on which the impugned notices are challenged by the Petitioner are two-fold:

(i) As far as the AY 2015-16 is concerned, with the notice under Section 147 having been issued more than four years after the end of the relevant AY in terms of Section 151(ii) of the Act, the satisfaction had to be of the Principal Chief CIT and not the Additional CIT;

(ii) If the notice in question is to be taken as the notice dated 8th April, 2021 then it is not in consonance with the newly inserted Section 148-A of the Act which requires the Assessing Officer (AO) to conduct an enquiry before issuing notice under Section 148 of the Act. No such notice has in fact been issued in the present case;

7. Replies have been filed separately in both the petitions by the Department. However, the stand taken is identical. It is submitted that in terms of Section 3 (1) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions), Act 2020 (the 2020 Act) the time for issuance of notice under Section 148 of the Act has been extended. Reference is made to the notification dated 31st March, 2021 issued by the Central Board of Direct Taxes (CBDT), extending the time limit for issuance of notice under Section 148 of the Act to 30th April, 2021 in the first instance and by a further notification dated 27th April, 2021 to 30th June, 2021. Accordingly, it is sought to be contended that the question of applicability of Section 148-A of the Act would not arise, because in terms of the CBDT notification dated 31st March, 2021 under the 2020 Act, the time for issuance of the original notice has itself been extended. Reliance is also placed on the following Explanation added by the CBDT notification dated 27th

July, 2021 to contend that it is the pre-amended Sections 148, 149 and 151 which would continue to apply:

> "Explanation- for the removal of doubts, it is hereby clarified that for the purpose of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income Tax Act, under this sub-clause, the provision of section 148, section 149 and section 151 of the Income Tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply."

8. The purport of the above reply of the Department is that it is relying only on the first notice dated 31st March, 2021 issued under Section 148 of the Act and not the subsequent notice dated 8th April, 2021in respect of both the AYs 2015-16 and 2016-17.

9. It is, therefore, apparent that as regards the subsequent notices dated 8th April, 2021 under Section 148 of the Act for the two AYs in question, since the mandatory procedure of a prior inquiry under Section 148-A of the Act has not been followed, those notices are unsustainable in law and they are hereby quashed.

10. As far as the initial notices under Section 148 of the Act issued on 31st March, 2021 are concerned, Section 151 of the Act as it stood prior to 1st April, 2021 would apply. In terms thereof, undeniably, the previous sanction for issuance of both the notices was taken only of the Additional CIT and not of either the Principal Chief CIT (for AY 2015-16) or the Principal CIT (for

AY 2016-17). In this regard, the reply of the Department is simply that "the Additional CIT is one of the authorities to reopen the assessment under Section 147 of the Act". This still does not answer the requirement of previous sanction having to be obtained only from the Principal Chief CIT (for AY 2015-16) and Principal CIT (for AY 2016-17). The sanction is of the Addl. CIT who is not the competent sanctioning authority.

11. Consequently, the notices under Section 148 of the Act issued in respect of both the AYs on 31st March, 2021 are illegal as they are contrary to Section 151 of the Act as it stood prior to 1st April, 2021. Consequently, the impugned notices under Section 148 of the Act issued on 31st March, 2021 in respect of both AYs are also hereby quashed.

12. This Court nevertheless clarifies that it will be open to the Department to proceed in accordance with law afresh in respect of the AYs after complying with all the procedural statutory requirements. The writ petitions are disposed of in the above terms.

(S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera/ Jr. Steno.