IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5070 OF 2022

Suresh Dhirajlal Shah ….Petitioner

V/s.

Income Tax Officer Ward 28(3)(1),
Mumbai and Ors. …Respondents

Mr. Devendra Jain i/b Ms. Radha Halbe for Petitioner.
Mr. Akhileshwar Sharma for Respondents.

CORAM : K.R. SHRIRAM &
N. R. BORKAR, JJ.
DATED : 5th MAY, 2022

P.C. :

1. In this case, though the notice issued under Section 148 of the Income Tax Act, 1961 (the Act) is dated 31st March, 2021, the same has been digitally signed only in April, 2021, it would mean that the notice has been issued after 31st March, 2021.

2. The Hon'ble Apex Court in the judgment of ***Union of India & Ors. vs. Ashish Agarwal***[1] partially set aside the order and judgment passed by the Hon'ble High Court Judicature at Allahabad in Writ Tax No.524 of 2021 and other Writ Tax Petitions. The order also covers the judgments passed by various other High Courts including this court in ***Tata Communications Transformation Services Limited V/s. Assistant Commissioner of Income Tax 14(1) & Ors.***[2]

3. The Hon'ble Apex Court has in paragraph no.10 passed the

1 Civil Appeal No. 3005/2022 dated 4th May, 2022.
2. Writ Petition No.1334 of 2021 dated 29th March, 2022.

following directions :

> *10. In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgments 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:*
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> *(i) The impugned section 148 notices issued to the respective assessees 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 assessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter;*
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> *(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.*
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> *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 assessees; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted);*
>
> *(iv) All defences which may be available to the assesses 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.*

4. In view of the above, petition stands disposed.

5. Certainly, since all rights and contentions are kept open, the assessee may take such steps if aggrieved by any order passed by the Assessing Officer.

6. In view of the above, the assessment order is quashed and set aside. So also the consequential orders/notices.

7. Revenue may restart the process as directed by the Hon'ble Apex Court.

(N. R. BORKAR, J.) **(K.R. SHRIRAM, J.)**