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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1377 OF 2022

Chhagan Chandrakant Bhujbal

....Petitioner

V/s.

Union of India and Ors.

...Respondents

Mr. Mahaveer Jain i/b Ms. Neha Anchlia for Petitioner.

Mr. Suresh Kumar for Respondents.

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

PC. :

1. On 2nd May, 2022 following order came to be passed :

1. From the affidavit in reply filed through one Santosh Kumar Srivastava affirmed on 24th March 2022 it does appear that the notice under Section 148 of the Income Tax Act, 1961 has been issued after 31st March 2022 but the procedure followed is the old procedure which came to be replaced by the Finance Act, 2021 with effect from 1st April, 2021.

*2. Therefore, this will be covered by our judgment in **Tata Communications Transformation Services Limited V/s. Assistant Commissioner of Income Tax 14(1) & Ors.**¹*

3. Since the Hon'ble Supreme Court of India has reserved the matter for its order, stand over to 5th May 2022.

4. Ad-interim granted earlier to continue till 7th May 2022.

2. The Hon'ble Apex Court in the judgment of **Union of India & Ors. vs. Ashish Agarwal**² partially set aside the order and judgment passed by

the Hon'ble High Court Judicature at Allahabad in Writ Tax No.524 of 2021

¹ Writ Petition No.1334 of 2021 dated 29th March, 2022.

² Civil Appeal No. 3005/2022 dated 4th May, 2022.

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.***³

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

(i) The impugned section 148 notices issued to the respective assesseees 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 assesseees information and material relied upon by the Revenue, so that the assesseees 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;

3. Writ Petition No.1334 of 2021 dated 29th March, 2022.

(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 notice 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.

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.)