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

WRIT PETITION NO.2143 OF 2022

Rudra Industries … Petitioner
Versus
Assistant Commissioner of Income Tax Central Circle 5(3) Mumbai And Others … Respondents

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Mr. Satish Mody a/w Aasita Khan for the Petitioner.
Ms. Swapna Gokhale i/b Mr. Suresh Kumar for the Respondent-Revenue.

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CORAM : DHIRAJ SINGH THAKUR & ABHAY AHUJA, JJ.

DATE : 20 JUNE 2022

P. C. :

. The Petitioner in the present Writ Petition challenges the Notice dated 24 April 2021 issued by Respondent No.2 under Section 148 of the Income Tax Act 1961 ("Act") for the Assessment Year 2014-15, on the ground that the notice was issued in terms of a repealed law and not as per the new Section 148-A.

2 Similar notices came to be challenged in a number of petitions filed before various High Courts in the country.

3 Considering the fact that as many as 90,000 such notices had been issued through out the country by Assessing Officers and with a view to cut down the litigation, the Apex Court in the Judgment of **Union of India and Others Vs. Ashish Agarwal**[1] dated 4 May 2022, while partially setting

1 Civil Appeal No.3005/2022 dated 4 May 2022

aside the judgment and order of High Court of Judicature at Allahabad in Writ Tax No.524 of 2021 and other Writ Tax Petitions, in paragraph-10, held as under :-

> "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 of 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 assesses which were issued under unamended Section 148 of the IT Act, which were the subject matter of writ petitions before the various 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 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-a-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;
>
> (iii) The assessing officers shall thereafter pass orders in terms of Section 148A(d) in respect of each of the concerned assesses; 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 assessees 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 This Court also in a number of petitions has disposed of the matters following the Apex Court judgment. One such judgment has been placed before us in the case of **Sai Cylinders Private Limited Vs. Assistant Commissioner of Income Tax Circle 8(1)(1), Mumbai And Others**[2].

5 Be that as it may. Following the judgment of the Apex Court in **Union of India and Others Vs. Ashish Agarwal** as also the judgment of this Court in **Sai Cylinders Private Limited Vs. Assistant Commissioner of Income Tax**, this Petition is allowed.

6 The impugned assessment Order dated 22 March 2022 is set aside along with the consequential Orders/Notices.

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

(ABHAY AHUJA, J.) **(DHIRAJ SINGH THAKUR, J.)**

2 Writ Petition No.3555 of 2021 and Others dated 5 May 2022