IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.05.2022
CORAM:

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY,J

W.P.No.12643 of 2022
and W.M.P.Nos.12085, 12087 of 2022

Giant Construction Company,
Represented by its Managing Partner,
Mr.P.Janakar, Son of Mr.Periyasamy
Aged 60 years,
No.52, Spencer Compound,
Dindigul - 624 001. ... Petitioner

Vs

1.The Deputy Commissioner of Income Tax,
Central Circle - 1(4),
3rd Floor, Investigation Building,
No.46 (Old No.108) Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Principal Commissioner of Income Tax (Central)
Chennai - 1, 3rd Floor, Investigation Building,
No.46 (Old No.108) Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in DIN & Letter No: ITBA/AST/F/17/2022-23/1042808590 (1) dated 21.04.2022 on the file of the first respondent relating to the A.Y.2017-18 and quash the same.

For Petitioner : Mr.G.Baskar
For Respondents : Mr.A.P.Srinivas,
CGSC

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O R D E R

The petitioner assails the communication dated 21.04.2022 by which the objections raised by the petitioner to the reopening of the assessment were rejected. The petitioner asserts that the impugned communication is in contravention of the amended Section 148-A of the Income Tax Act, 1961. Upon the insertion of Section 148-A, the petitioner contends that an inquiry should be conducted, if required, and even otherwise all the materials and reasons for reopening the assessment should be provided to the petitioner along with an opportunity to respond to the same. The communication is impugned on the ground that these requirements were not complied with.

2. Mr.A.P.Srinivas, learned Standing Counsel, accepts notice for the respondents. Both the petitioner and learned Standing Counsel for the respondents state that the contentious issues relating to the provisions of re-assessment were laid to rest in the recent Judgment of the Hon'ble Supreme Court in Union of India -vs- Ashish Agarwal, 2022 SCC OnLine SC 543. In particular, it is stated that the amended procedure is made applicable both in respect of notices issued prior to 01.04.2021 and subsequent thereto. The relevant paragraphs 26 and 27 are extracted below:

> "26. 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 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 assesees 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;

(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.

27. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge."

3. In view of the settled legal position, the impugned communication is quashed and the matter is remanded for further proceedings in accordance with paragraphs 26 and 27 of the Judgment in Union of India -vs- Ashish Agarwal cited supra.

4. W.P.No.12643 of 2022 is disposed of on the above terms. Consequently, W.M.P.Nos.12085, 12087 of 2022 are closed. No costs.

Sd/-
Assistant Registrar(V.O)

//True Copy//

Sub Assistant Registrar

rna/nr
To

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+1 cc to Mr.G.Baskar, Advocate Sr.NO. 31420

W.P.No.12643 of 2022
and W.M.P.Nos.12085, 12087 of 2022

RK(CO)
A.SK(16/05/2022)