IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM

THE HON'BLE Mr.JUSTICE **M.SUNDAR**

W.P.No.32728 of 2022
and
WMP.Nos.32101 & 32102 of 2022
in
W.P.No.32728 of 2022

The India Cements Limited,
Coromandel Towers,
93, Santhome High Road, Karpagam Avenue,
R.A.Puram, Chennai-600 028
Rep. by its Wholetime Director
Smt Rupa Gurunath

... Petitioner

-Vs.-

The Deputy Commissioner of Income Tax,
Corporate Circle 1(1),
Room No.611, Wanaparthy Block,
121, M.G.Road, Chennai-600 034.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the Respondent and quash the impugned order under Section 148A(d) of the Income Tax Act, 1961, dated 31.03.2022 in DIN & Notice No:ITBA/AST/F/148A/2021-22/1042352253(1) and the consequential Notice u/s.148 of the Act dated

31.03.2022 in DIN:ITBA/AST/S/148_1/2021-22/1042359414(1) for the assessment year 2018-19.

For Petitioner : Mr.Vikram Vijayaraghavan
along with Mr.R.Venkata Narayanan
of M/s.Subbaraya Aiyar Padmanabhan
Ramamani(Law Firm)

For Respondent: Mr.D.Prabhu Mukunth Arunkumar
Junior Standing counsel

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ORDER

This common order will now dispose of captioned main writ petition and the captioned two 'Writ Miscellaneous Petitions' ['WMPs' in plural for the sake of convenience and clarity].

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the first listing of captioned writ petition and captioned WMPs on 05.12.2022, which reads as follows:

'In the captioned writ petition, an 'order dated 31.03.2022 bearing reference No.ITBA/AST/F/148A/2021-22/1042352253(1) made under Section 148A(d) of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity]' and a consequential 'notice dated 31.03.2022 bearing reference No.ITBA/AST/S/148_1/2021-22/1042359414(1) under Section 148 of IT Act' [hereinafter 'impugned order' and 'impugned notice'

respectively for the sake of convenience and clarity] have been called in question.

2. Mr.R.Vijayaraghavan, learned counsel for writ petitioner assails the impugned order and impugned notice inter alia on the following grounds:

(a) Assessment pertains to 'assessment year 2018-2019' ['said AY' for the sake of convenience and clarity], assessment proceedings were underway when the impugned order came to be made and the same culminated in assessment order dated 05.09.2022 and the same has been carried in appeal by way of a statutory appeal under IT Act;

(b) Impugned order has been made on 31.03.2022 at 19:56 hours whereas writ petitioner / assessee's reply was uploaded prior to this time and the same has been acknowledged by the Department at 21:19:24. The impugned order proceeds on the basis that the writ petitioner assessee has not responded to pre-order notice (paragraph No.3 of the impugned order).

3. Mr.Prabhu Mukunth Arunkumar, learned Junior Standing Counsel accepts notice for lone respondent.

4. Learned counsel for writ petitioner to place before this Court details of the aforementioned statutory appeal.

5. Learned Revenue counsel to get instructions particularly, regarding the time when the impugned order was digitally signed. A scanned reproduction of the last page of the impugned order is as *follows:*

6. To be noted, time stands masked / covered by tick mark. Learned Revenue counsel to get instructions i.e., as to what the tick mark means and as to why the tick mark covers the digital signature.

7. <u>Registry to show the name of learned Revenue counsel in the next listing.</u>

8. <u>List in the Motion List on Friday i.e., on 09.12.2022.'</u>

3. As the aforementioned proceedings are to be read as an integral part and parcel of this order, short forms and abbreviations used in the

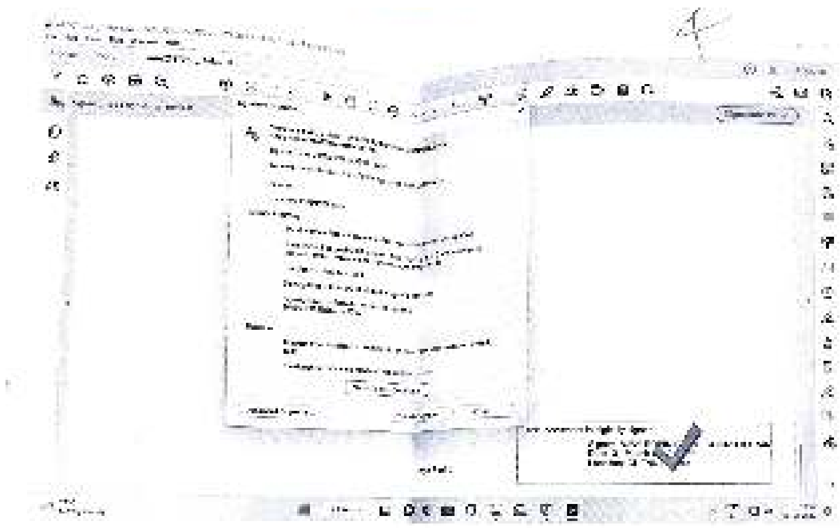
aforementioned proceedings shall continue to be used in the instant order also.

4. Today, Mr.Mr.Vikram Vijayaraghavan along with Mr.R.Venkata Narayanan of M/s.Subbaraya Aiyar Padmanabhan Ramamani (Law Firm) for the writ petitioner and Mr.D.Prabhu Mukunth Arunkumar, learned Junior standing counsel (Revenue counsel) for the lone respondent are before this Court.

5. Learned Revenue counsel adverting to earlier proceedings submits that he has since obtained instructions. Therefore, with the consent of learned counsel on both sides, main writ petition itself was taken up.

6. Aforementioned 05.12.2022 proceedings captures the crux and gravamen of the writ petitioner's complaint and other particulars essential for appreciating this order.

7. Adverting to earlier proceedings, this Court was informed that when anybody clicks on the tick mark on the digital signatures, there is a pop-up and it is typically as follows:



8. A perusal of the notice dated 25.03.2022 under Section 148A(b) of IT Act makes it clear that the writ petitioner-assessee had time till 31.03.2022 to send a reply. To put it in perspective, the writ petitioner-assessee had time till 59 minutes past 23 hours on 31.03.2022. There is also no disputation that the writ petitioner's reply was sent on 31.03.2022 and it has been duly acknowledged by the respondent at 21:19:24 hours but the respondent has made the impugned order about over an hour earlier i.e., at 19:56 hours on the same day. This means that the respondent has made the impugned order before the time given to the assessee for replying to the 148A(b) notice dated 25.03.2022 elapsed. Therefore, the impugned order deserves to be interfered

with on this sole ground. This means that the respondent shall now proceed from the 148A(b) notice dated 25.03.2022. In other words, the respondent shall now consider the writ petitioner's reply dated 31.03.2022 and redo the exercise/drill which has culminated in the impugned order. This also means that the impugned notice should also go as it is a consequence of impugned order.

9. Learned counsel for writ petitioner vehemently contended that the respondent should be directed to provide to the writ petitioner-assessee information and material relied upon by the Revenue. In support of this submission, learned counsel for writ petitioner pressed into service judgment of Hon'ble Supreme Court in ***Union of India Vs. Ashish Agarwal*** reported in ***[2022] 138 taxmann.com 64 (SC)***. In response to this argument, learned Revenue counsel makes two submissions. Learned Revenue counsel drew the attention of this Court to writ petitioner's reply dated 31.03.2022 which is now the sheet anchor and epicenter of the matter on hand and submitted that writ petitioner has taken a categoric stand that the writ petitioner-Company has no transaction with the Companies named in the 148A(b) notice and has also requested to provide information/document/evidence. To be noted, the last

paragraph of the writ petitioner's reply reads as follows:

> *'In this connection it is submitted that our company had no transaction with the companies named in the notice u/s 148A. Therefore, it is kindly request to provide the information/document/evidence available with and relied on by the Income Tax department to issue notice u/s 148A, which would help us to furnish our response.'*

10. Therefore when the Section 148A(b) legal drill is done *de novo* the above has to be addressed is his say. Besides this point, learned Revenue counsel submitted that ***Ashish Agarwal'***s case is distinguishable on facts as that was a case where the notice was issued under the earlier regime notwithstanding 148A(b) kicking in on and from 01.04.2021.

11. This writ Court has no hesitation in agreeing with learned Revenue counsel and the reasons are as follows:

> a) writ petitioner-assessee has sought for information/documents/evidence in the reply and therefore, if the *de novo* drill is to commence from 148A(b) notice dated 25.03.2022, obviously the respondent should take into account the reply. After all that is the crux and gravamen of this order.

Therefore, while agreeing with the learned Revenue counsel without any hesitation, this Court also considers that the submission of writ petitioner-assessee in this regard is no argument.

b) As regards the second submission on ***Ashish Agarwal'***s case, this Court has no difficulty in agreeing with the submission of learned Revenue counsel as there is no disputation that on facts ***Ashish Agarwal'***s case is one where the Revenue had erroneously issued notice under the earlier regime though the new regime had kicked in on and from 01.04.2021. In this regard, this Court respectfully reminds itself of the declaration of law made by a constitution Bench of Hon'ble Supreme Court in the celebrated ***Padma Sundara Rao Vs. State of Tamil Nadu*** case reported in ***(2002) 3 SCC 533,*** which deals with a manner in which a decision or precedent should be applied. The most relevant paragraph is paragraph 9 and the same reads as follows:

*'**9.**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is*

> *always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

Therefore, reliance placed in ***Ashish Agarwal*** 's case by learned counsel for writ petitioner is clearly misplaced and this Court is unable to agree with the learned counsel for writ petitioner. It is axiomatic that this Court agrees with learned Revenue counsel that ***Ashish Agarwal'***s case is distinguishable from the facts of the case on hand.

12. Learned counsel for writ petitioner also pressed into service an order dated 01.09.2022 made by Hon'ble Delhi High Court in ***Mahashian Di Hatti Pvt. Limited Vs. Deputy Commissioner of Income Tax*** case in support of his contention that there should be a directive to the respondent to furnish material relied on qua 148A(b) notice. Learned Revenue counsel points out that Delhi High Court case (***Mahashian Di Hatti***) case is also clearly distinguishable on

facts as that is a case where the writ petitioner's reply was considered but material was not furnished. Learned Revenue counsel points out that this has been captured in paragraphs 5, 6 & 7 of Delhi High Court order, which read as follows:

'5.Mr.Abhishek Maratha, learned Senior Standing Counsel for the Respondent-Revenue, who appears on advance notice, states that the Petitioner has received accommodation entries from Raj Trading Company, which is one of the twenty-eight bogus entities maintained by Sh.Deepak Nanjyani. He also states that the Revenue is in possession of bank details of Raj Trading Company. In fact, today in Court, he has handed over to learned counsel for the petitioner a copy of the email written by Income Tax Officer (Inv.) Raipur to Assistant Commissioner of Income Tax, Circle 16(1), Delhi.

6. This Court has consistently observed that to give effect to the objective of the scheme of Section 148A of the Act, the Assessing Officer must provide specific material and information to the Assessee in the notice issued under Section 148A(b) of the Act so that the Assessee can provide a meaningful response at the stage of inquiry under Section 148A proceedings. The following observation of this Court in its decision in ***Divya Capital One Private Limited v. ACIT & Ors., 2022 SCC OnLine Del 1461*** *is apposite:*

"11.This Court further finds that the information/material stated in the impugned show cause notice dated 17th March,

2022 issued under Section 148A(b) of the Act have not been shared with the Petitioner, despite specific request made by the Petitioner vide letter dated 24th March , 2022, thereby denying the Petitioner an effective opportunity to file a response/reply. The non-sharing of the information is violative of the rationale behind the judgment of this Court in Sabh Infrastructure Ltd., vs. Asst.CIT, MANU/DE/2989/2017 : 398 ITR 198 (Del).”

7.Consequently, as the show cause notice issued under Section 148A(b) of the Act as well as the subsequent notice dated 18th May, 2022 are bereft of any details, this Court is of the view that the Revenue by asking the Petitioner-Assessee to respond to the aforesaid vague show cause notice was virtually asking the Petitioner to search for 'a needle in a haystack'.

13. This Court has no hesitation in agreeing with the submission of learned Revenue counsel that ***Mahashian Di Hatti*** case is clearly distinguishable on facts as that was a case where matter proceeded without providing material to assessee. In this regard, the declaration of law [not just ratio] made by constitution Bench of Hon'ble Supreme Court in celebrated ***Padma Sundara Rao*** case (alluded to supra) would apply in equal force. To be noted, paragraph 9 of ***Padma Sundara Rao*** case has been extracted and

reproduced elsewhere in this order.

14. There is yet another perspective to the above matter. As this Court is now inclined to send the matter back to the respondent to commence the drill *de novo* from 148A(b) of IT Act notice dated 25.03.2022, it adequately nay comprehensively answers the prayer of writ petitioner. Therefore, further persuasion on the part of the writ petitioner that there should be a directive with specificity to the respondent to furnish information is completely unacceptable. This is more so as this is only going to delay the whole process and it may not really make any other difference qua the *de novo* drill.

15. In the light of the narrative, discussion and dispositive reasoning the following order is made:

a) impugned order and impugned notice both dated 31.03.2022 bearing reference No:ITBA/AST/F/148A/2021-22/1042352253(1) and DIN:ITBA/AST/S/148_1/2021-22/1042359414(1) respectively are set aside on the sole ground that the impugned order has been made before the time for writ petitioner-assessee to reply to the 148A(b) notice elapsed and the writ petitioner-assessee has in fact sent a reply before the time elapsed. In other words, the impugned order and impugned notice are set aside solely to facilitate the *de novo* drill after taking into account the reply of writ petitioner. To be noted, the impugned notice is a consequence or a product of the impugned order and therefore, impugned notice also perishes with the impugned order.

b) The respondent shall proceed with the *de novo* drill from the 148A(b) notice dated 25.03.2022 by taking into account the reply of the writ petitioner-assessee dated 31.03.2022 sent on 31.03.2022 [acknowledged by respondent at 21:19:24 hours];

c) the respondent shall complete the aforementioned *de novo* drill as expeditiously as the business of the respondent would permit and in any event within one month from today i.e., on or before 20.01.2023.

16. Captioned writ petition is disposed of in aforesaid manner. Consequently, captioned WMPs are disposed of as closed. There shall be no order as to costs.

20.12.2022

kmi

To

The Deputy Commissioner of Income Tax,
Corporate Circle 1(1),
Room No.611, Wanaparthy Block,
121, M.G.Road, Chennai-600 034.

M.SUNDAR, J

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