

OD-13

APOT/5/2023
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

KASHINATH & CO. PVT. LTD.

-Versus-

UNION OF INDIA & ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th January, 2023

Appearance :
Mr. Rites Goel, Adv.
...for the appellant.

Mr. Aryak Dutt, Adv.
...for the respondent.

The Court : We have heard Mr. Rites Goel, learned Advocate for the appellant and Mr. Aryak Dutt, learned Advocate for the respondent.

This intra-Court appeal by the writ petitioner is directed against the order dated 23rd September, 2022 in WPO/2636/2022. In the said writ petition the appellant had challenged the order passed by the assessing officer under Section 148A(d) dated 29th July, 2022.

The appellant/writ petitioner had raised the preliminary objection with regard to initiation of reopening proceedings on the ground that it is barred by limitation. The following are some of the grounds which were canvassed in the writ petition:

"XVIII. For that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income Tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided, become barred as the same is being without jurisdiction and contrary to the provisions of Section 149(1) as the impugned notice has been issued after expiry of 3 years from the end of relevant assessment year and that the alleged escapement of income is Rs.31,36,400 which is below 50 lakhs. Hence, the respondent authorities are seeking to levy and recover tax and deprive your petitioners of property without the authority of law and in violation of Articles 265 or 300A of the Constitution of India.

XIX. For that the impugned CBDT/respondent instruction stating that Assessment Year 2016-17 is still open for reassessment under Section 148/148A (after Finance Act, 2021) even today is manifestly illegal, ultra-vires, unlawful and arbitrary as per the Section 149(1)(b) of the Act

as amended by Finance Act, 2021. Your petitioner craves leave to refer to legislative intent behind said proviso to Section 149(1) as per explanatory memorandum to Finance Bill, 2021 at the time of hearing.

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XXII. For that the Scope of CBDT Instruction under Section 119 vis-à-vis court rulings; Further it is humbly submitted that CBDT in garb of instruction under Section 119 of 1961 Act as done in instant case on issue of time barring limitation under Section 149(1)(b) of the 1961 Act cannot override Hon'ble High Court/Supreme Court judgments.

XXIII. For that the basis of above stated arguments/contentions, it is humbly pleaded that impugned CBDT instruction no.1/2022 dated 11th May, 2022 in so Finance Act, 2021 as issue of time barring limitation under Section 149(1) has unlawfully and illegally interpreted the time barring dates and cannot go beyond that cutoff date; for which we rely and refer to a) plain text of Section 149(1)(b) read with first proviso thereof; b) legislative intent behind said provision as narrated in explanatory memorandum to Finance Bill, 2021; c) invalid and unlawful reference to TOLA for time barring date, when said aspect is no longer res integra and is conclusively decided in petitioner/assessee Finance Act, 2021 by this Hon'ble High Court and other Hon'ble High Court judgments and same stands approved/confirmed by Hon'ble Supreme Court; So prayer is made to direct the respondent to

suitably modify the impugned instruction by correct/rational interpretation of time barring date under Section 149(1) of the 1961 Act sans/de hors TOLA."

Apart from the above technical objections raised by the appellant, it was further contended that the information furnished by the department at the time of issuance of notice under Section 148A(d) of the Act was insufficient, inadequate and vague. In response to the said notice dated 19th May, 2022, the appellant had submitted a detailed representation/interim reply dated 2nd June, 2022. In the said reply, among other things, it was specifically stated that they are unaware as to how a loss of Rs.63,70,250/- was arrived at. Further, in terms of Section 149(1)(b) of the Act, they would also like to know what books of account and other documents/evidence are in possession of the department which revealed that income chargeable to tax has escaped assessment is represented in the form of asset. It was specifically contended that a loss is not covered under this provision, hence there can be no valid proceedings under Section 148 of the Act. Further it was submitted that the information furnished and the statements by some individual about some transactions are absolutely vague and there is no mention of the assessee's name anywhere. There is no specific information, statement or charge against the

assessee and the information is totally incorrect and cannot be the basis of any proceedings. After setting out the other grounds, the assessee sought for several important facts from the department and ultimately requested for dropping the proceedings. After receiving the said reply dated 2nd June, 2022, by notice dated 8th June, 2022 certain details were furnished and, on receipt of those details, one more representation was given by the assessee on 17th June, 2022. Once again referring to the limitation issue, the assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of *Union of India vs. Ashish Agarwal* reported in [2022] 138 taxmann.com 64(SC) that the notice issued by the department is a continuation of the directions issued by the Hon'ble Supreme Court which stipulated a time period of 30 days from the date of the order passed by the Hon'ble Supreme Court i.e. 3rd June, 2022. It was submitted that the information has been provided to the assessee by a letter dated 8th June, 2022. Furthermore it was contended that the information presented to them is not reliable and complete and the information states that the total loss is Rs.31,36,400/-. Thus, the assessee contended that it is not a fit case for reopening the assessment.

The assessing office has passed the order dated 29th July, 2022 under Section 148A(d) of the Act. This order was impugned in the writ petition.

On perusal of the order we find that none of the grounds canvassed by the appellant had been dealt with by the assessing officer, more particularly, the question of jurisdiction and limitation. That apart, the specific averments made by the appellant/assessee that the information was incomplete and unreliable has also not been dealt with. Thus, it is clear that the order dated 29th July, 2022 is vitiated on the ground of total non-application of mind, which would be sufficient for us to exercise jurisdiction and quash the impugned order.

For the above reason, the appeal (APOT/5/2023) is allowed and, consequently the order passed in the writ petition dated 23rd September, 2022 is set aside. In the result, the order impugned in the writ petition dated 29th July, 2022 and the consequential notice issued under Section 148 of the Act of the Act dated 30th July, 2022 are quashed.

After dictating the above judgment, the learned standing counsel for the respondent submits that in the event the assessing officer initiates fresh action, the assessee should not raise the point of limitation. Such a blanket protection cannot be given as from the very inception the

assessee has been challenging the initiation of reopening proceeding on the ground of limitation, apart from other grounds.

Therefore, all that we observe is the period spent before this Court i.e. from the date of filing of the writ petition till the date of this judgment, shall stand excluded for the purpose of computing limitation for initiating fresh action in accordance with law by the assessing officer.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)