

OD-22

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/231/2023
IA NO: GA/1/2023, GA/2/2023
THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-13(1), KOLKATA
-Versus-
RADHAKRISHNA BIMALKUMAR PRIVATE LIMITED

BEFORE:

The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYA

Date : 26th September, 2023

Appearance :

Mr. Prithu Dudhoria, Adv.

..for the appellant

Ms. Manju Bhuteria, Adv.

Mr. A.K. Upadhyay, Adv.

Mr. Rites Goel, Adv.

Mr. Lokesh Singh, Adv.

...for the respondent

The Court : This appeal by the revenue is directed against the order dated 27th April, 2022 in WPO No. 1706 of 2022, filed by the respondent/assessee challenging a notice issued under Section 148 of the Income Tax Act, 1961 (the Act).

There is a delay of 426 days in filing the appeal. Though the explanation offered by the revenue is not fully satisfactory, since a question of law is being

canvassed before this Court, this Court exercises discretion and condones the delay in filing the appeal.

We have heard Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellant and Ms. Manju Bhuteria, learned Counsel appearing for the respondent.

The short issue which falls for consideration is whether the notice issued by the appellant department under Section 148 of the Act is barred by limitation. The Learned Single Bench after taking note of the facts of the case pointed out that on the basis of the records it is clear that the notice which was impugned in the writ petition though bears a date and signature of the authority showing that it was signed on March 31, 2021 but was actually uploaded for communication after 31st March, 2021, which has to be treated as the date of issuance of the impugned notice. The Learned Single Judge earlier noted the decision of this Court in the case of *Bagaria Properties and Investment (P.) Ltd. vs. Union of India*, (2022) 134 taxmann.com 196(Cal.) and also the decision in *Manoj Jain vs. Union of India* (2022) 134 taxmann.com 173 (Cal.).

These decisions along with other decisions were the subject matter of appeal filed by the Union before the Hon'ble Supreme Court, which was decided by the Hon'ble Supreme Court in the decision in *Union of India vs. Ashish Agarwal*, (2022) 138 taxmann.com 64 (SC).

In paragraph 10 of the said judgment, the Hon'ble Supreme Court while allowing the appeals in part and modified the judgments rendered by various

High Courts in Bagaria Properties and Investment (P.) Ltd. Vs. Union of India and Manoj Jain Vs. Union of India by modifying and substituting the same with the following directions of which sub-paragraphs (i) to (iv) would be relevant for the case on hand which is quoted hereinbelow:

“(i) The impugned section 148 notices issues 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 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 30 days from the date of the judgment of the Hon’ble Supreme Court, that is, 4th May, 2022 provide to the respective assessee information and material relied upon by the revenue, so that the assessee can reply 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-a-vis those notices which have been issued under section 148 of the unamended Act from 1-4-2021 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 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(a) 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 assesseees including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assesseees and Revenue under the Finance Act, 2021 and in law shall continue to be available”.

In terms of the above directions, the Assessing Officer shall, within 30 days from the date of the judgment of the Hon’ble Supreme Court, that is, 4th May, 2022 provide to the respective assesseees information and material relied upon by the revenue, so that the assessee can reply the show cause notices within two weeks thereafter. Admittedly, the appellant/revenue did not comply with the said direction issued by the Hon’ble Supreme Court. However, the present appeal has been filed belatedly though the appellant/revenue was conscious of the fact that they failed to comply with the direction issued by the Hon’ble Supreme Court in *Ashish Agarwal*, as mentioned above.

After hearing the learned senior counsel for the appellant/revenue and perusal of the memorandum of appeal, we find that the appellant/revenue had decided to file the appeal by placing reliance on the decision of the High Court of Delhi reported in (2022) 143 taxmann.com 11 (Delhi). However on a careful reading of the entire judgment and the questions which were framed for consideration, we find that the decision supports the case of the assessee rather than the appellant/revenue. The appellant/revenue would reiterate before us that the notice which was impugned in the writ petition was signed on March 31,

2021 and uploaded on the very same date. In fact, this was one of the issues which was considered by the High Court of Delhi in Suman Jeet Agarwal and while answering the said issue which was framed as Question No.(III), the submission made before us is identical to that of the submission of the appellant/revenue in the case of Suman Jeet Agarwal. The Court after taking note of the said submission has rendered the following finding :

“It would also be relevant to note that the time taken by the ITBA e-mail software system on 31st March, 2021, to despatch the e-mails was not due to any software glitch. The time taken by the software system was as per the programming of the system, as admitted in the Compliance Affidavit. The programming to despatch the Notices in a controlled manner and batch mode was a pre-existing fact and to the knowledge of the Department. The time taken in despatch of the e-mail on 31st March, 2021, was therefore as per the controls set in the ITBA system”.

In paragraph 26.22 of the said judgment the said question was answered against the Department and would hold that the time taken by the ITBA's e-mail software system in triggering the e-mail and transmitting the said e-mails from the ITBA servers is attributable to the Department and, therefore, for the e-mails despatched on 1st April, 2021 or thereafter, the notices are held not to have been issued on 31st March, 2021. Thus, the appellant/revenue appears to have a wrong impression that the decision in Suman Jeet Agarwal would substantiate their case. Thus, considering the facts and circumstances of the case, we have no

hesitation to hold that the notice which has been impugned in the writ petition under Section 148 of the Act is barred by limitation and cannot be enforced.

For the above reasons, the appeal fails and the same is hereby dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)