Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 159 OF 2022

KAILASH SINGLA, THR. HER POA HOLDER SUMIT SINGLA ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

AND

WRIT PETITION NO. 182 OF 2022

MUKESH GULATI ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

AND

WRIT PETITION NO. 184 OF 2022

BALDEV RAJ ARORA ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

AND

WRIT PETITION NO. 185 OF 2022

PRERNA KHETRAPAL ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

AND

WRIT PETITION NO. 186 OF 2022

SUNIL OMPRAKASH GARG ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

AND

WRIT PETITION NO. 183 OF 2022

ASHOK KUMAR ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

AND

WRIT PETITION NO. 188 OF 2022

SAHANU SPONGE AND POWER PRIVATE LIMITED, REP. BY ITS DIRECTOR, SUNIL OMPRAKASH GARG ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

AND

WRIT PETITION NO. 189 OF 2022

SAHANU SPONGE AND POWER PRIVATE LIMITED, REP. BY ITS DIRECTOR, SUNIL OMPRAKASH GARG ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

AND

WRIT PETITION NO. 187 OF 2022

TUSHAR SUNIL GARG ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

AND

WRIT PETITION NO. 190 OF 2022

RAJAT MUKESH GULATI ...Petitioner

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ... Respondents

Mr Parag Rao with Ms Sowmya Drago, Advocates for the petitioners.

Ms S. Linhares, Central Government Standing Counsel for respondent No.1.

Mr Raviraj Chodankar, Central Government Standing Counsel for respondent No.2.

CORAM: M. S. SONAK & BHARAT P. DESHPANDE, JJ.

DATED: 3rd JANUARY,2023.

P.C.:

Heard Mr Parag Rao with Ms S. Drago, learned Counsel for the petitioners, Ms S. Linhare, learned Standing Counsel for respondent No.1 and Mr Chodankar, learned Standing Counsel for respondent No.2.

2. The learned Counsel submit in unionism that the issues raised in these petitions are substantially covered by the decision by the Supreme

Court in ***Union of India and others v/s. Ashish Agarwal***[1], and therefore, these petitions may be disposed of in the light of the directions in paragraphs 26 and 27 of the Judgment.

3. Paragraphs 26 and 27 of ***Ashish Agarwal*** (supra) reads as follows:

> *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*

1 2022 SCC OnLine SC 543

> *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.

4. Accordingly, even these petitions are disposed of by treating the impugned notices as Show Cause Notices in terms of Section 148 A (b) of the Income Tax Act.

5. Ms. Linhares states that the respective Assessing Officers shall within 30 days from today provide to the respective Assessees the information and material collected by the Revenue, so that the Assessees can reply to the Show Cause Notices within two weeks after that.

6. Based on the decision in ***Ashish Agarwal*** (supra) and the aforesaid statement, we dispose of these petitions.

7. There shall be no order for costs.

8. All concerned to act on the basis of an authenticated copy of this order.

BHARAT P. DESHPANDE, J. **M. S. SONAK, J.**

MEENA VISHAL BHOIR Digitally signed by MEENA VISHAL BHOIR Date: 2023.01.03 16:32:21 +05'30'