IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.6530,6533,6540,6544,6546 and 6550 of 2022
and
W.M.P.Nos. 6618, 6623, 6633,6637, 6640, 6645,13669,13738, 13895 and 15565 of 2022

W.P.No.6530 of 2022

Rishab D Singhvi
6-A,Lakshmanan Street
T.Nagar
Chennai-600017. ... Petitioner

.Vs.

Assistant Commissioner of Income Tax
Office of the Assistant Commissioner
of Income Tax
Central CIR 294)
Chennai 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in DIN and Notice No.ITBA/AST/S/148/2021-22/1032439335(1) dated 15.4.2021 for the Assessment year 2016-17 in PAN AAMPR4647J on the file of the respondent and quash the same.

For Petitioner : Mr.G.Ashokapathy
for M/s.Pass Associates

For Respondent : Mdr.B.Ramaswamy
Senior Standing Counsel

COMMON ORDER

The issue involved in all these writ petitions are common and hence, they are taken up together, heard and disposed off through this common order.

2.All these writ petitions have been filed challenging the impugned notice issued under Section 148 of the Income Tax Act, 1961 in DIN and Notice No.ITBA/AST/S/148/2021-22/1032439335(1) by the respondent dated 15.04.2021 for the Assessment Year 2016-17.

3.The learned counsel for the petitioner submitted that in all the writ petitions the last date for filing the issuance of notice for reopening of assessment ends on 31.3.2021. However, due to Covid, Department *vide* circular dated 31.3.2021, extended the said period. The time limit for complying the action under Section 148 stood extended from 31.3.2021 to 30.6.2021. Learned counsel further submitted that the issue of the legality of the extension of validity of the time limit by the Department by way of Circulars was under challenge before the Hon'ble Supreme Court, in the case of **Union of India v. Ashish Agarwal** reported in **[2022] 138 taxmann.com 64 (SC)**, wherein, the Hon'ble Supreme Court held that the impugned notice under Section 148 notice 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 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). Therefore, the learned counsel submitted about the law laid down by the Hon'ble Supreme Court applies to the facts of the present case also.

4.The learned counsel for the respondent submitted since the Hon'ble Supreme Court upheld the Circular as per the directions issued at para 10 of the judgment, they would consider the notice issued under Section 148 of the Act.

5. The relevant portion of Para 10 of the judgement of the Hon'ble Supreme Court reads as follows.

> *"10. 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:*
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> *(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 visàvis 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."

6. Considering the facts and circumstances of the case and taking into consideration the submissions made by the learned counsel for both sides, following the law laid down by the Hon'ble Supreme Court, the

notice issued under Section 148 by the Department shall be construed under Section 148A(b) and proceed further by providing opportunities to the petitioners to make their reply and file documents and also provide opportunity for personal hearing.

7. In view of the above, the impugned notice issued by the respondent shall be construed as notices under Section 148A(b) and proceed against the petitioner in accordance with law, by providing sufficient opportunity to the petitioner to put forth the case and thereafter dispose of the same on merit.

8.All the writ petitions are disposed of accordingly. No costs. Consequently, all the connected miscellaneous petitions are also closed.

10.10.2023
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Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
kp

To

Assistant Commissioner of Income Tax
Office of the Assistant Commissioner
of Income Tax
Central CIR 294)
Chennai 600 034.

KRISHNAN RAMASAMY.J.,
kp

W.P.Nos.6530,6533,6540,6544,6546 and 6550 of 2022

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(2/2)