IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.6692 of 2022
and
W.M.P.No.6773 and 6774 of 2022

Chellappan Manoj Kumar ... Petitioner

.Vs.

1 The Income Tax officer,
Non Corp Ward 17(2),
Chennai,
Room No. 516
BSNL Building, V Floor,
Income Tax office - BSNL Tower,
No.16 Greams Road Chennai
(TN) 06

2 The Principal Commissioner of Income Tax-1,
Chennai, 121, M.G. Road,
Nungambakkam,
Chennai,
Tamil Nadu-34.

3 The Central Board of Direct Taxes,
through its Chairman,
North Block,
New Delhi - 110 002.

4 Union of India
through Revenue Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi - 110 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, direction thereby quashing the impugned notice bearing No. ITBA/AST/S/ 148/ 2021-22/ 1032607016(1) dated 22/04/2021 issued by the 1st respondent under Section 148 of the Income Tax Act 1961 for being void and illegal.

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

For Respondents : Mdr.B.Ramaswamy
Senior Standing Counsel

ORDER

This Writ Petition has been filed to quash the impugned notice, dated 22/04/2021 issued by the 1st respondent under Section 148 of the Income Tax Act, 1961, for being void and illegal.

2.The learned counsel for the petitioner submitted that in this Writ Petition, 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.

3.The 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 re-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:

(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 showcause 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 showcause 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 onetime 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.

Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

10.10.2023

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

To

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KRISHNAN RAMASAMY, J.

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