IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2023

CORAM:

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P.No.15342 of 2022

and

W.M.P.No.14504 of 2022

Ramesh Swaminathan (HUF)
Old No.41, New No.12,
Chanrapani Street
West Mambalam
Chennai – 600 033.

... Petitioner

-Vs-

1.The Central Board of Direct Tax,
Income Tax Department,
New Delhi.

2.The Income Tax Officer,
Non Corporate Ward 19(6),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

3.Additional/Joint/Deputy/Assistant Commissioner of Income Tax,
The Assessing Officer,
National Faceless Assessment Centre,
New Delhi.

... Respondent

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari by calling for records of the Petitioner in PAN: AAHHR3874E on the file of 2nd Respondent and quash the Impugned Notice issued under Section 148 issued by the 2nd Respondent in DIN & Notice No: ITBA/AST/S/148/2020-21/1031868736(1) dated 29.03.2021 and impugned reassessment order passed by 3rd respondent in DIN & Notice No: ITBA/AST/S/147/2021-22/1042222339(1) dated 31.03.2022 for the Assessment year 2016-17.

For Petitioner : Mr.S.P.Chidambaram

For Respondents : Mr.R.S.Balaji, Sr. Standing Counsel
Assisted by Ms.S.PRemalatha,
Jr. Standing Counsel.

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ORDER

The present Writ Petition has been filed challenging the impugned show cause notice issued by the second respondent dated 29.03.2021 as well as the impugned reassessment order made by the third respondent dated 31.03.2022.

2.Mr.S.P.Chidambaram, learned counsel appearing on behalf of the petitioner would mainly contend that the show cause notice issued by the second respondent has been digitally signed on 29.03.2021 and that Section 148A of the Finance Act, 2021 [hereinafter referred to as the 'Act'] came into effect from 01.04.2021. In that event, if the respondent intends to issue any notice under Section 148 of the Act, 2021, with effect from 01.04.2021, the respondent has to first issue notice under Section 148A of the Act and upon receipt of response/objections from the assessee, the respondent shall come to the conclusion and only thereafter, the respondent can issue notice under Section 148 of the Act.

3.Therefore, it is the contention of the learned counsel appearing on behalf of the petitioner that only in order to avoid the procedure contemplated under Section 148A of the Act, the second respondent has digitally signed the show cause notice on 29.03.2021, however the same has been dispatched from the office of the second respondent only on 01.04.2021 and served on the petitioner through post on 03.04.2021 [after introduction of Section 148A with effect from 01.04.2021]. Hence, for all practical purposes it had to be construed that notice has been issued on the petitioner only on 03.04.2021, after commencement of the provisions of Section 148A of the Act and therefore, the impugned show cause notice issued by the second respondent dated 29.03.2021 is contrary to the provisions of Section 148A of the Act.

4.Per contra, learned Senior Standing Counsel appearing on behalf of the respondents would submit that in the case of ***Union of India v. Ashish Agarwal*** reported in ***[2022] 138 taxmann.com 64 (SC)***, the Hon'ble Apex Court held that notice issued under Section 148 of the Act shall be deemed to have been issued under Section 148A and the assessee can be directed to give their reply to the notices and accordingly, the further proceedings may continue. It would be appropriate to extracted paragraph 10(i) of the said decision which 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 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 assessees can reply to the show-cause notices within two weeks thereafter;

5.The learned Senior Standing Counsel appearing for the respondent would submit that though Section 148A of the Act came into effect only from 01.04.2021, whereas the impugned notice under Section 148 of the Act was issued on 29.03.2021 [before Section 148A came into force], the aforesaid principle laid down in ***Ashish Agarwal case*** can be applied to the instant case, if appropriate order is passed by this Court.

6.Considered the submissions made by the learned counsel appearing on behalf of the petitioner and the learned Senior Standing Counsel appearing on behalf of the respondents and perused the records placed before this Court.

7.Though according to the learned Senior Standing Counsel appearing on behalf of the respondent the notice under Section 148 of the Act was issued on 29.03.2021 and Section 148A of the Act came into effect only from 01.04.2021, the date of service of notice viz., 03.04.2021 will have significance and hence, for all practical purposes it had to be construed that notice has been issued on the petitioner only on 03.04.2021, after commencement of the provisions of Section 148A of the Act.

8.Further, in similar circumstances, the Hon'ble Apex Court in the case of ***Union of India v. Ashish Agarwal*** reported in ***[2022] 138 taxmann.com 64 (SC)*** has held that notice issued under Section 148 of the Act shall be deemed to have been issued under Section 148A and thereby directing the assessee to give reply to the notice and accordingly, the further proceedings may continue.

9.Applying the said principle laid down by the Hon'ble Apex Court in the case of ***Union of India v. Ashish Agarwal*** reported in ***[2022] 138 taxmann.com 64 (SC)***, this Court deems it appropriate to direct the petitioner to consider the notice issued under Section 148 of the Act as the one issued under Section 148A of the Act and file its reply and thereafter, the respondents can pass orders, after affording an opportunity of personal hearing to the petitioner.

10.In such view of the matter, the impugned show cause notice issued by the second respondent dated 29.03.2021 as well as the impugned reassessment order made by the third respondent dated 31.03.2022 are set aside and the petitioner is directed to consider the notice dated 29.03.2021 issued under Section 148 of the Act as a notice issued under Section 148A of the Act and file its reply along with supporting documents within a period of 21 days from the date of receipt of a copy of this order and thereafter, the respondents are directed to dispose of the said reply on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner and proceed further accordingly.

11.The Writ Petition is disposed of with the above directions. Consequently, connected miscellaneous is closed. No costs.

29.11.2023

Neutral Citation : Yes/No (**2/2**)
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