IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2022

Pronounced on: 30.06.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.22385 of 2022
and
WMP Nos.21445 & 27712 of 2022

Vellore Institute of Technology,
Represented by its Chairman and Managing Trustee,
Mr.G.Wiswanathan. ... Petitioner

Vs

Assistant Commissioner of Income Tax (Exemptions),
Income Tax Department,
No.121, M.G.Road, Nungambakkam,
Chennai – 600 034. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent contained in its order bearing DIN & Notice No.ITBA/COM/F/17/2022-23/1044238006(1), dated 28.07.2022, passed by the respondent under Section 148A(d) of the Income Tax Act, 1961, for PAN: AAATN0569M, for Assessment Year 2015-16 and all proceedings in furtherance thereof including but not limited to the notice issued by the respondent under Section 148 of the Act, bearing DIN & Notice No.ITBA/AST/M/148-1/2022-23/1044251056(1), dated 28.07.2022, for PAN: AAATN0569M, for Assessment Year 2015-16, and to quash the same as arbitrary, unjust, illegal, barred by limitation and consequently forbear the respondent or its superiors, subordinates, agents etc., from re-assessing the petitioner's income for the Assessment Year 2015-16 under Section 147 of the Income Tax Act, 1961.

For Petitioner : Mr.Mr.R.V.Eashwar, Senior Counsel
For Mr.Suhrith Parthasarathy

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner is a public charitable trust assessed to income-tax in terms of the provisions of the Income-Tax Act, 1961 (in short, 'Act') on the file of the sole respondent.

2.The present writ petition has been filed assailing proceedings for re-assessment under Section 147 of the Act. The proceedings have a chequered history in that, in relation to the same year in which proceedings are sought to be issued now, ie., assessment year (in short, AY) 2015-2016, proceedings had been initiated even earlier proposing to reassess the petitioner's income.

3. Since the sequence of events commencing from the first issuance of notice would have a bearing on the present matter, I encapsulate the trajectory that the matter has taken since 2021. The petitioner filed a return of income in time for AY 2015-2016 declaring total income as NIL. The return was taken up for scrutiny and a regular assessment in terms of Section 143(3) of the Act had been passed on 18.12.2017 accepting the return filed.

4. That order had been passed after service of notice under Section 143(2) and questionnaires under Section 142(1) and after hearing the responses of the petitioner to the notices / questionnaire issued thereto. The returned income had been accepted in full with no addition made and a NIL demand raised under the regular assessment.

5. The first notice under Section 148 had been received by the petitioner on 12.04.2021(first notice) on the premise that the income of the petitioner for AY 2015-2016 had escaped assessment within the meaning of Section 147 of the Act. On 23.03.2021, Finance Act, 2021 had been passed changing the procedure as well as the statutory provisions relating to re-assessment.

6. The new provisions came into effect on 01.04.2021. Since the notice dated 12.04.2021 had been issued in pursuance of the unamended procedure that was in vogue prior to 01.04.2021, that notice came to be challenged by the petitioner in W.P.No.15019 of 2021.

7.That writ petition, along with several others filed agitating a similar cause of action, came to be allowed by Division Bench of this Court on 04.02.2022. Liberty had been granted to the Department to initiate action for reassessment, in accordance with law. This decision has become final. Identical causes of action has been espoused by assesses all over the country who had been aggrieved by similar re-assessment notices received from the Department.

8.Thus, and based on such liberty as above, a notice (second notice) had been received by the petitioner under Section 148 A(b) dated 31.03.2022. This notice issued, in terms of the new procedure, reiterated the allegation that income had escaped assessment for AY 2015 – 2016. That notice had included the details of the information on the basis of which the aforesaid allegation had been made, reading as follows:

> "*Please refer to the above.*
> *In the said letter it is stated that you have filed income tax return in response to notice u/s 148 of the I.T.Act, 1961 issued on 12/04/2021 for the A.Y.2015-16 and requested reasons for reopening.*
>
> *2. Your trust M/s.Vellore Institute of TEchonology, Chennai is assessed in this Circle under PAN:AAATN0569M. For the Assessment Year 2015-16, the Return of Income was filed declaring Total income as "NIL". The case was taken up for scrutiny and assessment u/s 143(3) was completed on 18.12.2017 accepting the returned income*
>
> *3. Now an information was received, that huge donation of Rs.5,89,60,034/- was made by the trust during the year and the purpose of the same needs to be verified. In addition the following deductions that are not allowable have also been claimed in the return,*
>
> *1. Fines and Penalty – Rs.3,67,640/-*
> *2. TDS Late Payment interest – Rs.74,129/-*
> *3. Prior year expenses – Rs.1,07,84,362/-*
> *4. Notional loss on sale of assets – Rs.3,10,78,268/-*
>
> *The trust has also failed to include the following in the Income and expenditure statement*
> *1. Profit on sale of assets – Rs.67,74,179/-*
> *2. Receipts of income received in Advance – Rs.263,22,53,913/-*

In view of the above, there is a reason to believe that an amount of Rs.373,04,33,191/- has escaped assessment and it has to be brought to tax. This is for your information."

9.The petitioner was afforded opportunity to show-cause why the prima facie belief of the Department not be confirmed, and a notice under Section 148 be issued. The distinction between the erstwhile and the presently subsisting systems of re-assessment is that, under the old system it was necessary for the assessing officer to record reasons on the basis of which a notice under Section 148 would be issued. The reasons thus form the substraction of proceedings for reassessment.

10.The assessee would then be called upon to file a return of income on the basis that either a return had not been filed originally or that such return had been deficient in terms of revealing the proper income to be brought to tax. The Hon'ble Supreme Court in the case of *Income-Tax Officer v GKN Driveshafts* (259 ITR 18) had clarified that upon receipt of a notice under Section 148, the assesse was required to comply by filing the return or adopt the same return as initially filed if it were of the opinion that the return was full and true.

11.It could thereafter seek a copy of the reasons recorded and upon receipt thereof, was entitled to file its objections to the assumption of jurisdiction by the assessing officer. The assessing authority was bound to pass a speaking order on the objections filed by the petitioner and it is only thereafter and if the officer still believed that there was escapement of income, that a notice under Section 143(2) would be issued commencing the proceedings for re-assessment and culminating in an order of re-assessment.

12.This procedure has been statutorily incorporated under the new scheme of re-assessments, effective 01.04.2021. Obviating the necessity to record reasons and furnish them to the assesse upon request, the reasons are to be part of show-cause notice under Section 148A(b) of the Act and solicit a response thereto. After hearing the assessee, an order is to be passed under Section 148 A(b) of the Act dealing with the objections raised.

13.In the present case, the order rejecting the objections of the petitioner has been passed on 18.04.2022 under Section 148A(d) accompanied by a notice issued under Section 148 dated 18.04.2022 as per which the officer should have proceeded with proceedings for reassessment.

14.A writ petition came to be filed challenging the second notice and consequent proceedings in W.P.No.10781 of 2022 and an interim order granted on 28.04.2020. The Court stated that while notice u/s 148 dated 18.04.2022 could go on, any decision taken by the respondent would be subject to result of the writ petition.

15. In the meanwhile, an appeal came to be filed by the Department against an order passed by the Allahabad High Court quashing a notice u/s 148 issued after 31.03.2021 similar to what had been done by the Department in the case of this

petitioner. The Hon’ble Supreme Court consolidated several writ petitions and appeals relating to challenges to the proceedings under the new regime of re-assessment and in *Union of India and others v Ashish Agarwal* [C.A.No. 3005 of 2022 dated 04.05.2022], disposed the batch with the following directions:-

> “*11. 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 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 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.”*

16.Thus, the notice first issued under Section 148 was to be deemed to have been issued under Section 148A of the Act. Liberty was granted to the revenue to continue proceedings under the new regime and all defences were kept available for an assessee to invoke.

17.The question that arises here is to whether at all the liberty granted under the judgment in *Ashish Agarwal (*supra) would be available / applicable in this case, as, even prior to delivery of that judgment on 04.05.2022, the respondent had issued a notice under Section 148A(b) of the Act followed by an order under Section 148A (d) of the Act accompanied by Section 148 notice dated

18.04.2022. To be noted, that the second notice under Section 148 dated 18.04.2022 was issued even prior to the judgment of the Supreme Court on 04.05.2022.

18.Not content with the same, the officer thereafter acts on the liberty granted to the department by the Supreme Court and issues a show-cause notice on 02.06.2022 (third notice) on the subject matter *'subsequent proceedings with reference to Section 148A(d) in consequence to Hon'ble SC order dated 04.05.2022 and letter'*. Under this notice, the officer states that notice under Section 148 dated 18.04.2022 was dropped and notice under Section 148 dated 12.04.2021 which was the subject-matter of the first writ petition filed by the petitioner in W.P.No.15019 of 2021 was revived.

19.The annexure to the second notice under Section 148 A(b) dated 02.06.2022 set out the reasons for the proposed proceedings as follows:-

> "*Reasons*
> *The items mentioned below cannot be allowed as deduction:*
> *1.Donation made – Rs.5,89,60,034/-*
> *2.Fines and Penalty – Rs.3,67,640/-*
>
> *3.TDS Late Payment Interest – Rs.74,129/-*
>
> *4.Prior year expenses – Rs.1,07 ,84,362/-*
>
> *5.National loss on sale of assets – Rs.3,10,78, 268/-*
>
> *The following incomes are not included in the Income and Expenditure statement*
>
> *6. Profit on sale of assets – Rs.67,74,179/-*
>
> *7. Receipts of income received in Advance – Rs.263,22,53,913/-*

Sl.No.	Assets sold	Loss claimed as expenditure	Receipts to be treated as income
1	Computers	1064952	Not available
2	Lab equipment	2547724	Not available
3	Fork lift	800000	200000
4	Laptops	19932737	2136979
5	Televisions	443700	291400
6	Vehicles	6248955	3757000
7	Air Conditioner	40200	388800
		31078268	6774179

20.The petitioner responded reiterating the sequence of dates and events that have transpired in this matter and pointing out that the decision of the Madras High Court quashing notice dated 12.04.2021 had been accepted by the Department and no writ appeal had even been filed.

21.That apart, after the passing of the order in writ appeal, proceedings had been commenced afresh by issuance of a notice under Section 148 A(b) and those proceedings had culminated by issuance of notice u/s 148 dated 18.04.2022. To be noted, that no notice under Section 143 (2) has been issued pursuant to notice under Section 148 dated 18.04.2022 and as on date, the proceedings have lapsed.

22.The departmental second innings was duly brought to the notice of the officer in the objection to show-cause notice dated 02.06.2022, as per which the officer opened the third innings of re-assessment for the same year.

23.That apart, and addressing the notice on merits, the petitioner also sought screenshots of the information flagged by the risk management strategy of the CBDT or the final objections raised by the CAG in support of the assumption of jurisdiction by the officer. A doubt was raised in regard to the so-called 'flagging' by the computer system under the software driven risk management strategy of the CBDT. This material was never supplied and instead an order is come to be passed on 28.07.2022 under Section 148 A(b) of the Act impugned in this writ petition.

24.The stand of the Department is, in general, that there is no lacunae so far as the assumption of jurisdiction is concerned and that the writ petition is premature as the matters rests only at stage of issuance of notice under Section 148. They rely on several cases for the proposition that the writ court must not assume to itself jurisdiction at this stage. The proceedings have been initiated with necessary approval and there is no merit in the writ petition.

25.At paragraph 7 of the counter, the Department concedes the position that the proceedings initiated vide notice dated 08.04.2022 (second notice) were dropped as, according to them the old proceedings initiated vide notice dated 12.04.2021 stood revived by the judgment in *Ashish Agarwal*.

26.As regards the demand of the assesse to provide screenshots verbatim of the insight portal, they disavow any such responsibility to provide such material to an assessee. On merits, they argue that the Department must be permitted to proceed with the matter and take it to its logical conclusion, citing judgment of the Apex Court in the case of *Gian Castings (P) Ltd v CBDT* [140 Taxman.com 31] and a decision of the Delhi High Court in the case of *Gulmohar silk (P) Ltd v ITO* [W.P.(C) 5787 of 2022 dated 07.04.2022.].

27. The rival contentions of Mr.Eshwar for Mr.Suhrith Parthasarathy, and Mr.A.P.Srinivas, learned Senior Standing Counsel have been heard.

28.Though the parties have raised very many legal issues relating to re-assessment under the new regime, this writ petition can well be disposed on a preliminary question. This is the third round of proceedings for re-assessment. The first round ended with success for the petitioner with the allowing of W.P.No.15109 of 2021 granting liberty to the Department to initiate proceedings if limitation so permitted.

29.The Department issued a second notice in April, 2021 and proceedings have been taken forward till the passing of order under Section 148 A(d) and notice u/s 148 dated 04.05.2022. Those proceeding, the Department concedes at para 7 of counter dated 17.10.2022, have been dropped,

30.In such circumstances, there is absolutely no justification for the Department to re-visit the proceedings simply invoking the liberty granted in Ashish Agarwal. Having chosen to drop the second round of proceedings, the Department is bound by that decision in full.

31.The explanation tendered for issuance of 148 A (b) notice yet again for the third time on 02.06.2022 is fallacious and unacceptable as the liberty granted under *Ashish Agarwal* would be available only in those situations where the matters stood at an initial / preliminary stage of re-assessment i.e., at notice stage. In matters where the proceedings have been carried forward to the stage of passing of Section 148A(d) order and issuance of section 148 notice, there is simply no justification in law or in fact, to subject the petitioner to a third round of proceedings. In my view, this is a case, where the liberty granted has not been 'used' but 'abused' by the Department.

32.That apart, the above submission of the Revenue that the proceedings initiated on 01.04.2021 stood revived is also founded to be factually incorrect as there are material differences between the reasons dated 25.06.2021 and those under the Section 148A(b) notice dated 04.05.2022. If, as the Department states, the third round is only a revival of the earlier proceedings, then the reasons ought to have been identical, which is not the case. Thus, the justification for the impugned proceedings is found vitiated on this aspect as well.

33.A reading of the judgment in *Ashish Agarwal* specifically the directions extracted make it clear that the liberty related relates to Section 148 notices alone as paragraph 26(1) categorically states that *'the impugned Section 148 notices issued to the respective assessees under unamended Section 148 of the IT Act and which were the subject-matter of writ petitions before 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)'.*

34.Such liberty is unavailable to the respondent in this case since the respondent has, suo motu, and even prior to the judgment in *Ashish Agarwal* acted on the liberty granted by the Madras High Court and issued notice under Section 148A (b) in April, 2021. Having so availed the same, and thereafter allowing the proceedings to lapse, there is no question of initiating proceedings once again, which, in my considered view, is nothing but sheer harassment to an assessee.

35.For the reasons as above, I am of the considered view that the petitioner is liable to succeed. The impugned notices and proceedings are quashed and this writ petition is allowed. No costs. Consequently, connected MPs are closed.

30.06.2023

Index : Yes

Speaking Order

Neutral citation:Yes

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To

Assistant Commissioner of Income Tax (Exemptions),

Income Tax Department,

No.121, M.G.Road, Nungambakkam,

Chennai – 600 034.

DR.ANITA SUMANTH, J.

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WP.No.22385 of 2022

30.06.2023