

\$~48

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Decision delivered on: 24.04.2023

+

W.P.(C) 5129/2023 & CM Nos.20046-47/2023

LSR MEDICAL PVT. LTD.

..... Petitioner

Through: Mr Samyak Jain, Mr Ghanshyam Aggarwal and Ms Ritika Aggarwal, Adv.

versus

DCIT CIRCLE 13(1) & ANR.

..... Respondents

Through: Mr Abhishek Maratha, Sr Standing Counsel with Mr Akshat Singh, Jr Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.20047/2023

1. Allowed, subject to just exceptions.

W.P.(C) 5129/2023 & CM No.20046/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Abhishek Maratha, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

3. In view of the order that we propose to pass, Mr Maratha says that no

counter-affidavit is required to be filed in the matter and that he will argue based on the record presently available to the court. Therefore, with the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2015-16.

5. The initial notice under Section 148 of the Income Tax Act, 1961 [in short, “Act”] which was issued to the petitioner is dated 30.06.2021.

5.1 The record also shows that pursuant to the judgment rendered by the Supreme Court in *Union of India v. Ashish Aggarwal* (2022) 444 ITR 1 (SC), notice dated 02.06.2022 issued under Section 148A(b) of the Act was served on the petitioner *via* e-mail dated 08.06.2022.

5.2 Learned counsel for the petitioner says that this notice was uploaded on the designated portal only on 09.06.2022.

6. It is the contention of the learned counsel for the petitioner that the notice dated 02.06.2022 issued under Section 148A(b) of the Act, lost its efficacy after 03.06.2022.

6.1 For this purpose, learned counsel for the petitioner not only relies upon the aforementioned judgment of the Supreme Court but also Instruction No.1/2022 dated 11.05.2022 issued by the Central Board of Direct Taxes (CBDT). In particular, emphasis is laid on paragraph 7.1 read with paragraph 8.1 of the said instruction. For the sake of convenience, the relevant paragraphs are extracted hereafter:

“7.0 Cases where the Assessing Officer is required to provide the information and material relied upon within 30 days:

7.1 Hon'ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16 if the income escaping assessment, in that case for

that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assesseees, it is clarified that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases.

8.0 Procedure required to be followed by the Assessing Officers to comply with the Supreme Court judgment:

8.1 The procedure required to be followed by the Jurisdictional Assessing Officer/Assessing Officer, in compliance with the order of the Hon'ble Supreme Court, is as under:

- The extended reassessment notices are deemed to be show cause notices under clause (b) of section 148A of the Act in accordance with the judgment of Hon'ble Supreme Court. Therefore, all requirement of new law prior to that show cause notice shall be deemed to have been complied with.
- The Assessing Officer shall exclude cases as per clarification in paragraph 7.1 above.
- **Within 30 days i.e, by 2nd June 2022, the Assessing Officer shall provide to the assesseees, in remaining cases, the information and material relied upon for issuance of extended reassessment notices.**
- The assessee has two weeks to reply as to why a notice under section 148 of the Act should not be issued, on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year. The time period of two weeks shall be counted from the date of last communication of information and material by the Assessing Officer to the assessee.
- In view of the observation of Hon'ble Supreme Court that all the defences of the new law are available to the assessee, if assessee makes a request by making an application that more time be given to him to file reply to the show cause notice, then such a request shall be considered by the Assessing Officer on merit and time may be extended by the Assessing Officer as provided in clause (b) of new section 148A of the Act.
- After receiving the reply, the Assessing Officer shall decide on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148 of the Act. The Assessing Officer is required to pass an order under clause (d) of section 148A of the Act to that effect, with the prior approval of the specified authority of the new law. This order is required to be passed within one month from the end of the month in which the reply is received by him from the assessee. In case no such reply is furnished by the assessee, then the order is required to be passed within one month from the end of the month in which time or extended time allowed to furnish a reply expires.
- If it is a fit case to issue a notice under section 148 of the Act, the

Assessing Officer shall serve on the assessee a notice under section 148 after obtaining the approval of the specified authority under section 151 of the new law. The copy of the order passed under clause (d) of section 148A of the Act shall also be served with the notice u/s 148.

- *If it is not a fit case to issue a notice under section 148 of the Act, the order passed under clause (d) of section 148A to that effect shall be served on the assessee.”*

[Emphasis is ours]

7. Besides this, it is also contended that the said notice dated 02.06.2022 issued under Section 148A(b) of the Act does not bear the name and designation of the concerned officer. In this context, our attention is drawn to Annexure-4 appended on page 104 of the case file.

7.1 The submission made by the learned counsel for the petitioner is that the absence of name and designation of the concerned officer, violates the provision of Section 282A of the Act.

8. Having regard to the provisions of the said instruction, in our view, the notice dated 02.06.2022 issued under Section 148A(b) of the Act cannot be sustained. It is, accordingly, set aside.

9. Consequently, the order dated 30.07.2022 issued under Section 148A(d) of the Act is also set aside.

10. That said, the respondents/revenue will be at liberty to take the next steps in the matter, *albeit*, as per law.

11. At this juncture, it is correctly pointed out by learned counsel for the petitioner, the cause list does not show the correct title of the case. The correct title of the case is ‘*LSR Medical Pvt. Ltd. v. DCIT Circle 13(1) & Anr.*’ [wrongly shown as ‘*LSR Medical Pvt. Ltd. v. ITO Circle 13(1) & Anr.*’].

12. The writ petition is disposed of in the aforesaid terms.
13. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 24, 2023

aj

