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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement reserved on: 13.07.2023
Judgement pronounced on : 26.07.2023

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W.P.(C) 6217/2023 & CM APPL. 24446/2023

JINDAL EXPORTS AND IMPORTS PRIVATE LIMITED Petitioner

Through: Mr Ved Jain & Mr Nischay Kantoor,
Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 13(1), DELHI & ORS.

..... Respondents

Through: Mr Gaurav Gupta, Sr. Standing Counsel
with Mr Shivendra Singh & Mr Puneet
Singhal, Standing Counsels.

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W.P.(C) 6891/2023 & CM APPL. 26869/2023

KIRAN CREDITS PRIVATE LIMITED Petitioner

Through: Mr Ved Jain & Mr Nischay Kantoor,
Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 13(1), DELHI & ORS.

..... Respondents

Through: Mr Gaurav Gupta, Sr. Standing Counsel
with Mr Shivendra Singh & Mr Puneet
Singhal, Standing Counsels

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W.P.(C) 6884/2023 & CM APPL. 26860/2023

KIRAN CREDITS PRIVATE LIMITED Petitioner

Through: Mr Ved Jain & Mr Nischay Kantoor,
Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 13(1), DELHI & ORS.

..... Respondents

Through: Mr Gaurav Gupta, Sr. Standing Counsel
with Mr Shivendra Singh & Mr Puneet
Singhal, Standing Counsels

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W.P.(C) 6183/2023 & CM APPL. 24310/2023

JINDAL EXPORTS AND IMPORTS PVT. LTD. Petitioner

Through: Mr Ved Jain & Mr Nischay Kantoor,
Advocates.



versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 13(1), DELHI & ORS.
..... Respondents

Through: Mr Gaurav Gupta, Sr. Standing Counsel
with Mr Shivendra Singh & Mr Puneet
Singhal, Standing Counsels.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

GIRISH KATHPALIA, J.:

1. The factual matrix being similar and legal matrix being same, these four writ petitions are taken up together for disposal. We heard learned counsel for both sides and examined the relevant legal position.

2. In these writ petitions, the petitioners have assailed legality of notice under Section 148A(b) of the Act and orders under Section 148A(d) of the Act on multiple grounds. However, the petitions can be disposed of on one of those grounds without traversing through the remaining.

3. For convenient reference, the relevant dates and particulars of these writ petitions are tabulated below:

Writ Petition No. WP(C)	Assessment Year	Date of notice under Section 148 of the Act	Date of issuance of notice under Section 148A(b) of the Act	Date of delivery of notice under Section 148A(b) of the Act	Date of reply to notice under Section 148A(b) of the Act	Date of order under Section 148A(d) of the Act
6217/2023	2013-14	28.06.2021	02.06.2022	08.06.2022	22.06.2022	30.07.2022
6891/2023	2013-14	23.04.2021	02.06.2022	08.06.2022	19.06.2022	30.07.2022
6884/2023	2014-15	03.06.2021	20.06.2022	08.06.2022	19.06.2022	30.07.2022



6183/2023	2014-15	23.04.2021	02.06.2022	08.06.2022	22.06.2022	30.07.2022
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4. One of the grounds on which these writ petitions can be disposed of is as follows. According to the petitioners, notices dated 02.06.2022 under Section 148A(b) of the Act, which were mailed to the petitioners on 08.06.2022 had lost efficacy after 03.06.2022, therefore, the notices as well as the consequent orders under Section 148A(d) of the Act are liable to be set aside.

5. On the issue of time limits, it would be apposite to traverse through the clarificatory Instruction No. 1/2022 dated 11.05.2022, issued by Central Board of Direct Taxes (CBDT) consequent to the judgment of the Hon'ble Supreme Court in the case of *Union of India vs Ashish Aggarwal*, 2022(5) TMI 240 SC relevant portions whereof 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 assessee, 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]

6. The impugned notices under Section 148A(b) of the Act, having been mailed after 03.06.2022, do not just abrogate the mandate of the CBDT



instructions quoted above but also violate the provisions of Section 282A of the Act insofar as the name and designation of the concerned officer issuing the same find no mention in the same.

7. That being so, the notices under Section 148A(b) of the Act impugned in these writ petitions cannot be sustained.

8. In the case of *LSR Medical Pvt. Ltd. vs DCIT Circle 13(1) & Anr* WP(C) 5129/2023, decided on 24.04.2023 by a co-ordinate bench of this court to which one of us (Rajiv Shakdher, J.) was a member allowed the writ petition on similar grounds.

9. In view of above discussion, the notices under Section 148A(b) of the Act and orders under Section 148A(d) of the Act, impugned in these writ petitions are set aside and the petitions are allowed, however, granting liberty to the respondent/revenue to take further steps in accordance with law.

10. Consequently, the pending applications also stand disposed of.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

JULY 26, 2023/as