

\$~18

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Decision delivered on: 14.02.2023

+

W.P.(C) 12278/2022

USHA GUPTA

.... Petitioner

Through: Mr Ajay Wadhwa & Mr Ujjwal Jain,
Advocates.

versus

INCOME TAX OFFICER, WARD 11(1) & Anr. ... Respondent

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J. (ORAL):

1. The present Writ Petition has been filed *inter-alia* challenging the notice issued under Section 148 of the Income Tax Act, 1961 [hereinafter called "the Act"] dated 30.06.2021 [hereinafter called "the Impugned Notice"] received by the petitioner on 16.07.2021, on the ground that it is not in accordance with the new regime introduced by the Finance Act, 2021, being barred by limitation and hence, illegal and invalid in the eyes of law. The impugned notice relates to Assessment Year (AY) 2013-14.
2. Based on the impugned notice, an order dated 29.06.2022 under Section 148A(d) of the Act was passed against the petitioner.
3. Learned counsel for the petitioner, Mr Ajay Wadhwa, submits that the time period available to the respondent/revenue to issue notices under the erstwhile Section 148 of the Act, was up to 30.06.2021. Since the

impugned notice, although dated 30.06.2021 was served on 16.07.2021, the proceedings initiated are barred by time. In support of his plea, Mr Wadhwa relies upon the Judgment of a Coordinate Bench in the matter of ***Suman Jeet Agarwal v. Income Tax Officer***¹ and also the order passed by this Bench in ***M/s Vinayak Services Pvt Ltd. v. Income Tax Officer Ward 26(3) Delhi & Ors.***²

- 3.1 It is also the contention of Mr Wadhwa that the *ratio* of the decision of the Supreme Court in ***Union of India v. Ashish Agarwal***³, does not apply to the case of the petitioner, since only notices under the erstwhile provisions of Section 148 of the Act issued between 01.04.2021 to 30.06.2021 are deemed to have been issued under the new Section 148A of the Act.
4. Mr Abhishek Maratha, learned Senior Standing Counsel, who appears on behalf of the respondent/revenue submits that the impugned notice contains a DIN and that this number cannot be generated without issuing such notice via the designated system. The DIN and date of the impugned notice is the proof of the fact that the notice was not issued on 16.07.2021 but on 30.06.2021 and it is likely due to a technical glitch that the impugned notice was delivered after 30.06.2021.
- 4.1 However, Mr Maratha, also fairly accepts that the aspect concerning validity of such notices issued under the erstwhile Section 148 of the Act being invalid, is covered by the judgment rendered by the Court in ***Suman Jeet Agarwal*** case (supra) and ***Vinayak Services*** case

¹ 2022 SCC OnLine Del 3141

² W.P. (C) 12220/2022- dated 14.12.2022.- DHC

³ 2022 SCC OnLine SC 543

(supra).

5. The record shows that the impugned notice was sent by e-mail to the Petitioner at 12:12 A.M. on 16.07.2021 on the e-mail ID: cashashigarg@gmail.com. It cannot but be accepted by the respondent/revenue that even though the notice is dated 30.06.2021, the e-mail that has been placed on record evidencing service of the impugned notice, bears a date and time stamp: 16.07.2021 at 12:12 A.M. No other document establishing delivery of the impugned notice on any date prior to 16.07.2021 has been placed on record by the respondent/revenue.
6. In these circumstances, we agree with learned Counsel for the petitioner/assessee, that the impugned notice is barred by limitation and is contrary to the view taken by the Court in *Suman Jeet Agarwal* case (supra) and *M/s Vinayak Services* case (supra).
7. Thus, for the foregoing reasons, we are inclined to set aside the impugned notice issued under Section 148 of the Act.
8. The Writ Petition is disposed of in the aforesaid terms.
9. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

RAJIV SHAKDHER, J

FEBRUARY 14, 2023/SA