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

% **Date of decision: 21.07.2023**

+ **W.P.(C) 14326/2022 & CM APPL. 43744/2022**

HIMANSHU INFRATECH PVT LTD Petitioner
Through: Mr Rohit Jain and Mr Aniket D.
Agrawal, Advs.

versus

INCOME TAX OFFICER & ORS. Respondent
Through: Mr Abhishek Maratha, Sr. Standing
Counsel for Revenue

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

GIRISH KATHPALIA, J. (ORAL):

1. This petition, brought under Articles 226 & 227 of the Constitution of India assails the notice dated 30.06.2021 under Section 148A(b) of the Income Tax Act, coupled with notice dated 13.05.2022, communicating the relevant material and order dated 27.07.2022 under Section 148A(d) of the Act pertaining to the Assessment Year 2014-15. On service of notice, the respondent revenue entered appearance through Senior Standing Counsel and filed a counter-affidavit to resist the writ action. We heard learned counsel for both sides.



2. For convenience, the prayer clause of the petition is extracted below:

(I) Issue a writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing:

(a) the unsigned notice (purportedly) dated 30.06.2021 [served/ dispatched on 16.07.2021] issued under section 148, as it existed prior to substitution vide Finance Act, 2021 w.e.f. 01.04.2021, and now deemed to be notice under section 148A(b) of the Income Tax Act, 1961 ('the Act'), pursuant to judgment of the Hon'ble Apex Court in the case of Union of India vs. Ashish Agarwal [2022] 444 ITR 1 (SC);

(b) the letter/ notice dated 13.05.2022 issued by Respondent No.1 in compliance of the judgment of the Hon'ble Apex Court in the case of Ashish Agarwal (supra) and in terms of Instruction No.1 dated 11.05.2022 issued by Respondent No.3 communicating the so-called information/ material forming the basis of proceedings under section 148/148A of the Act;

(c) the order dated 27.07.2022 passed by Respondent No.1 [with the prior approval of Respondent No.2] under section 148A(d), and the consequent initiation of reassessment proceedings vide notice dated 27.07.2022 issued under section 148 of the Act; in the case of the Petitioner for assessment year 2014-15, and all proceedings/ actions consequent thereto;

(II) Issue a writ/ direction declaring Instruction No.1 dated 11.05.2022 issued by Respondent No.3 as ultra vires, to the extent that the same is contrary to the provisions of section 147-149 and 151 of the Act and in gross and blatant violation of the law laid down by the Hon'ble Supreme Court in the case of Ashish Agarwal (supra);

(III) Issue a writ/ direction declaring that the provisions of sections 147/ 148 permitting reopening of assessment simply on the basis of "information" as defined in Explanation 1 to section 148 of the Act, to be highly arbitrary, irrational and violative of Article 14 of the Constitution as well as the substantive provisions of the Act;

(IV) stay the reassessment proceedings initiated under sections 147/148 vide the impugned notice dated 27 .07 .2022 issued under section 148 of the Act, and/or any other proceedings initiated thereunder for the assessment year 2014-15, during pendency of the present petition;

(V) grant ad-interim ex-parte stay in terms of prayer (IV) above;

(VI) call for the records of the case from the Respondents;

(VII) pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case".



3. On the first effective hearing, the dispute was crystallized vide order dated 02.12.2022 as follows:

“2. This writ petition is directed against the notice dated 30.06.2021 issued under Section 148 of the Income Tax Act, 1961 [in short, “Act”].

2.1 Besides this, challenge is also laid to the notice/letter dated 13.05.2022 issued under Section 148A(b) of the Act and the order dated 27.07.2022 issued under Section 148A(d) of the Act.

2.2 In addition thereto, Instruction No.1 dated 11.05.2022 issued by the Central Board of Direct Taxes (CBDT)/respondent no.3 which, evidently, has been issued pursuant to the judgment of the Supreme Court rendered in Union of India v. Ashish Aggarwal (2022) 444 ITR 1 (SC), is also assailed.

2.3 There is an omnibus prayer as well. Via this prayer, vires of sections 147 and 148 of the Act is put under the scanner by invoking Article 14 of the Constitution.

3. Mr Rohit Jain, who appears on behalf of the petitioner, has drawn our attention to the notice dated 30.06.2021. [See Annexure A, page 101 of the case file].

3.1. It is Mr Jain’s contention that although the said notice is dated 30.06.2021, it was dispatched on 16.07.2021. For this purpose, our attention is drawn to page 102 of the case file.

4. Therefore, in sum, it is Mr Jain’s submission that the notice issued under Section 148 of the Act is time-barred, as it has been issued beyond the window available to the respondents/assessee i.e., between 01.04.2021 and 30.06.2021 as per the provisions of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [in short, “TOLA”].

5. We may also note that Mr Jain has submitted before us that since the assessment year (AY) under consideration is 2014-2015 and there was a complete disclosure of the purported escaped income; limitation, in the normal course, expired on 31.03.2018. That the transaction in issue, which concerned sale of shares of Taru Promoters Pvt. Ltd. to Peach Impex Pvt. Ltd., was disclosed in the financial statements of the petitioner. The veracity of this plea was sought to be established by referring to the notice issued to the petitioner under Section 133(6) of the Act dated 24.03.2021 and the reply, furnished qua the notice, which is dated 25.03.2021.[See Annexure ‘G’, page 145 and 150 of the case file].

6. In any event, according to Mr Jain, since, as noted above, the notice issued under Section 148 of the Act was served on the petitioner on 16.07.2021, the impugned proceedings are time-barred.

7. The record shows that on two previous occasions, i.e., 10.10.2022 and 21.11.2022, opportunity was given to Mr Maratha to obtain



instructions. Obviously, no instructions have been received by Mr Maratha.

8. Issue notice.

8.1. Mr Abhishek Maratha accepts notice on behalf of the respondents (which includes CBDT/respondent no.3).

9. A counter-affidavit will be filed within three weeks from today.

9.1 Rejoinder thereto, if any, will be filed before the next date of hearing.

10. List the matter on 21.07.2023.

11. In the meanwhile, the impugned order dated 27.07.2022 and the reassessment proceedings concerning A.Y. 2014-2015 triggered by respondent no.1 shall remain stayed”.

4. Accordingly, the respondent/revenue filed a counter-affidavit, sworn on 31.01.2023.

5. Today, in the course of submissions, both sides took us through the material on record. Learned counsel for petitioner contended that the impugned notices and order are liable to be set aside solely on the ground of limitation insofar as the notice under Section 148A(b) of the Act was dispatched on 16.07.2021 while the limitation period already stood expired on 30.06.2021 itself. It was argued on behalf of petitioner that the time available for issuance of notice under Section 148 of the Act that was available to the respondent/ revenue, as per law, spanned between 01.04.2021 to 30.06.2021. On the other hand, learned Senior Standing Counsel for respondent/revenue in all fairness admitted that according to records, although limitation expired on 30.06.2021, the notice under Section 148 of the Act was dispatched to the petitioner/assessee on 16.07.2021, but further explained that the delay in issuance of the notice occurred on account of technical glitches due to which the notice could not be uploaded on ITBA.



6. The documents annexed as Annexure A to the petition are the notice dated 30.06.2021 under Section 148 of the Act addressed to the petitioner; email communication dated 16.07.2021 regarding delivery of the notice under Section 148 of the Act; and a screenshot of the e-filing portal of the Income Tax Department reflecting uploading of the notice 16.07.2021.

7. It would be significant to observe that although the notice dated 30.06.2021 under Section 148 of the Act bears an endorsement at the foot of the page that it has been digitally signed, it is inchoate, in the sense that it is not accompanied by a date. The date would have revealed when the digital signatures were appended on the notice. Admittedly, the said notice was never physically delivered to the petitioner/assessee. As such, the fact remains that service of the said notice under Section 148 of the Act was affected on the petitioner only on 16.07.2021 through email, though the limitation period had already expired on 30.06.2021.

8. In the cases titled *M/s Vinayak Services Pvt. Ltd vs Income Tax Officer Ward-26(3) Delhi*, WP(C) 12220/2022 decided on 14.12.2022; *Pawan Kumar Gupta vs Income Tax Officer, Ward 11(1)*, 2023:DHC:1961-DB; and *Usha Gupta vs Income Tax Officer, Ward 11(1)*, 2023:DHC:1960-DB, under similar circumstances, a Co-ordinate Bench of this court, which included one of us (Rajiv Shukdher, J.), allowed the writ petitions and quashed the notices under Section 148A(b) as well as orders under Section 148A(d) of the Act, impugned therein.



9. In view of above discussion, the impugned notice under Section 148A(b) and the impugned order under Section 148A(d) of the Act are quashed and accordingly the writ petition as well as the application under consideration stand disposed of.

10. File be consigned to records.

(GIRISH KATHPALIA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

JULY 21, 2023/as

Click here to check corrigendum, if any