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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3422 OF 2023
(Pankaj Champaklal Gandhi Vs. The Principal, Chief Commissioner,
Income Tax, Pune and another)

Mr.R.R.Chandak, Advocate for the Petitioner.
Mr.Alok Sharma, Advocate for the Respondent / Income Tax
Department.

(CORAM : RAVINDRA V. GHUGE AND
R.M. JOSHI, JJ.)

DATE : FEBRUARY 22, 2024

PER COURT :

1. We have heard the learned Advocates for the respective sides for quite some time. The Respondent / Department opposes the contentions of the Petitioner and prays that the Petition be dismissed.

2. Considering that the Principal Seat has delivered a judgment on 15.01.2024 in WP No.1945/2023 (The New India Assurance Company Limited Vs. The Assistant Commissioner of Income Tax and Others), we are referring to the short issue raised in this Petition. It is undisputed that the impugned notice has been issued after the amendment to the Finance Act, on the basis of the provisions

that existed before the amendment and the said notice is in relation to the Assessment Year 2013-2014.

3. The contention of the Department is that certain quantum of earning / transaction escaped assessment of the income. Hence, the Assessment Officer had issued notice for reopening the assessment for Assessment Year 2013-2014 with regard to the purported escaped income assessment. By the judgment delivered in **The New India Assurance Company Limited** (supra), this Court has come to a conclusion in paragraph Nos. 36 to 39 as under :-

*“36 Therefore, in the present case, as the foundation of the entire reassessment proceeding, viz., the notice issued in June 2021 itself was barred by limitation in view of non-applicability of Notification No.20/2021, the superstructure sitting thereon, viz., the reassessment proceedings initiated pursuant to judgment in Ashish Agarwal will also be regarded as beyond time limit. Therefore, on this ground as well, the impugned reopening notice dated 28th July 2022 issued for AY 2013-14 in petitioner's case is barred by limitation and deserves to be quashed and set aside. Alternatively, it is well settled that a notice under Section 148 of the Act cannot be issued in order to reopen the assessment of an assessee in a case where the right to reopen the assessment was already barred under the pre-amended Act on the date when the new legislation came into force. In **CIT V/s. Onkarmal***

Meghraj (HUF) the Hon'ble Apex Court held:

"That raises the question whether that proviso could be applied without reference to any period of limitation. It is a well-settled principle that no action can be commenced has expired. It is unnecessary to cite authorities in support of this position. Does the fact that the second proviso says that there is no period of limitation make a difference? xxxxxxxxxxxx.

xxxxxxxxxxx In J.P. Jani, Income-tax Officer v. Induprasad Devshanker Bhatt (1969) 72 1.T.R. 595; (1969) 1 S.C.R. 714 (S.C.) this court held that the Income-tax Officer cannot issue a notice under section 148 of the Income Tax Act, 1961, in order to reopen the assessment of an assessee in a case where the right to reopen the assessment was barred under the 1922 Act at the date when the new Act came into force. It was held that section 297(2)(d) (ii) of the 1961 Act was applicable only to those cases where the right of the Income-tax Officer to reopen an assessment was not barred under the repealed Act. This decision is broadly in line with the opinion of Das and Kapur JJ. in Prashar's case (1963) 49 1.T.R. (S.C.) 1; (1964) 1 S.C.R. 29 (S.C.) xxxxxxxxxxxx.

For AY 2013-14, the time limit to issue a notice under Section 148 of the Act had already expired on 1st April 2021. On the said date, the assessee had a vested right, which de hors the 1st proviso

to the amended Section 149 of the Act, could not be taken away and thus, based on the well settled principles of law, the reopening of the AY 2013-14 after 31 March 2021 is invalid, without jurisdiction and barred by limitation.

37 *We shall deal with Mr. Sharma's submissions as under:*

(a) As regards reliance on the provisions of the Limitation Act, 1963, the provisions of the Limitation Act, 1963 do not apply to the provisions of the Income Tax Act, 1961 and especially, not in the present case in view of the specific period provided for in the provisions of the Act as well as TOLA. In any case, this defence of respondents cannot be sustained as they have not taken any such contention in either the order passed under Section 148A(d) or in the affidavit in reply;

(b) As regards applicability of Section 3 of TOLA - exclusion of Covid period, this argument is, in effect, nothing but the theory of travel back in time which was urged by the Revenue to support the reopening notices issued between 1st April 2021 to 30th June 2021 before this Court, as well as other High Courts [and which eventually led to the judgment in Ashish Agarwal (Supra)]. As noted earlier, this Court and other Courts have already snubbed the relate back/travel back in time theory and also the Instruction No.1 of 2022;

(c) As regards applicability of Notifications No.20 of 2021 dated 31 March 2021 and No.38 of 2021 dated 27th April 2021

extending the time limit even for AY 2014-15 and it is extended till 30 June 2021, respondent, in other words, argues that the Notification No.20 of 2021 seeks to extend the time limit inter alia for issuing notice under Section 148 which was expiring on 31 March 2021 not only under the provisions of the Act, but would also include the time extension in the Act by virtue of TOLA. To put in another way, the time limit expiring on 31 March 2021 specified in Notification No.20 of 2021, according to respondents, would have to be read to include limitation under the Act read with TOLA. As noted earlier, this contention is flawed inasmuch as it expands the scope of the Notification and violates its plain language, viz., the time limit, specified in, or prescribed or notified under the Income Tax Act falls for completion. The limitation under the Act (erstwhile Section 149) for reopening the assessment for the AY 2013-14 expired on 31 March 2020. Hence, Notification No.20 of 2021 did not apply to the facts of the present case. Notification No.38 of 2021 dated 27th April 2021 categorically uses the expression the time limit for completion of such action expires on the 30th day of April 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June 2021. Hence, it is incorrect to say that 31 March 2021 under the Act would mean under the Act, plus, extension by TOLA;

(d) The submission that the Hon'ble Supreme Court, while deciding Ashish Agarwal (Supra), was conscious of the limitation of 6 years expiring on 31 March 2021 under the pre-amendment provisions in respect of AY 2013-14 if the Covid period was not excluded, despite which the Apex Court has stated that all notices issued should be read

to be issued under Section 148A to prevent the Revenue getting remediless, is unacceptable. This argument clearly fails to appreciate that the effect of Revenue's contention is that despite the substantive defence available to the assessee in Section 149 of the amended Act, as well as the express directions of the Hon'ble Supreme Court allowing the assessee to take all defences available under the Act, the judgment of Ashish Agarwal (Supra) would permit them to reopen the assessment of AY 2013-14 would not only make the defence expressly available to the assessee useless and unusable, but would be contrary to well established principles of law. In Supreme Court Bar Association (Supra), the Hon'ble Supreme Court espoused that its powers conferred under Article 142 of the Constitution of India, being curative in nature and even with the width of its amplitude, cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. Article 142 would not be used to supplant substantive law applicable to a case or cause and it will not be used to build a new edifice where none existed earlier by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. In the present case, Revenue's argument, if accepted, would be in conflict with the above law as despite the express language of 1 proviso to Section 149, reopening notice for the AY 2013-14 would be permitted to be issued beyond 6 years on the pretext that the Hon'ble Supreme Court in exercise of its powers under Article 142 permitted them to do so and otherwise, they would be remediless. On the contrary, while permitting the Revenue to re- initiate the reassessment proceedings, the Apex Court also granted liberty to assesseees to raise all

defences available to the assessee including the defences under Section 149 of the Act. The Apex Court observed that its order will strike a balance between the rights of the Revenue as well as the respective assessees. Moreover, in Siemens Financial (Supra), this Court has already considered a similar contention of the Revenue and held that equity has no place in taxation or while interpreting taxing statute such intendment would have any place and that taxation statute has to be interpreted strictly. The Revenue also fails to appreciate that no particular case was considered by the Hon'ble Supreme Court while deciding Ashish Agarwal (Supra).

It is apposite to cite here an extract of the judgment of the Hon'ble Supreme Court in Parashuram Pottery Works Co. Ltd V/s. Income Tax Officer, which reads as under:

.....It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and

quasi- judicial controversies as it must in other spheres of human activity..".

(e) The contentions that (i) the true meaning of Apex Court order in Ashish Agrawal (Supra) is that the notices issued under Section 148, irrespective of the Assessment Year of the unamended Act, between 1st April 2021 to 30th June 2021 are to be treated as show cause notices without being hit by limitation, if issued on or before 30th March 2021 and (ii) the defence under Section 149 available to the assessee would mean that if the Revenue had issued any notice under Section 148 under the unamended Act during the period 1st April 2021 to 30th June 2021 pertaining to AY 2013-14, the same would be barred by limitation under Section 149 in effect means the Civil Appeal of the Revenue in Ashish Agrawal (Supra) was dismissed, are completely flawed. It completely fails to appreciate that the limitation period to issuance of reopening notices under Section 148 for all Assessment Years prior to AY 2013-14 had already expired on 31 March 2019 or earlier. The provisions of TOLA obviously could not save such a time limit and the Revenue could not have validly issued reopening notices for years prior to AY 2013-14 on or after 1st April 2019. Therefore, the defence so expressly allowed to be taken by the Hon'ble Supreme Court would otherwise be unnecessary;

(f) The submission that the Apex Court, in exercise of power under Article 142 of the Constitution, has deemed the notices issued between 1st April 2021 to 30th June 2021 under Section 148A(b) of the Act issued within limitation and by following the manner of

computation of limitation provided in TOLA, the days from 1st April 2021 to 30th June 2021 would stand excluded and, therefore, the notices could be deemed to be issued on 31st March 2021, we find it to be rather fallacious. The fallacy of this contention of Revenue is conspicuous inasmuch as if the notices issued under Section 148 between 1st April 2021 and 30th June 2021, which according to them, are deemed to be issued on 31st March 2021, then it is obvious that the provisions of the new reassessment law introduced by the Finance Act, 2021 cannot apply as they came into force w.e.f. 1st April 2021 and onwards. Ashish Agarwal (Supra) in no uncertain words stated that the new provisions have to apply to all such notices. Therefore, the argument urged is completely contrary to law as well as the binding directions of the Hon'ble Supreme Court;

(g) As regards reliance on Touchstone Holdings (Supra), the Hon'ble Delhi High Court held that the initial notice dated 29th June, 2021 issued under Section 148 is within limitation. No findings on the validity or otherwise of the notice issued after May 2022 pursuant to the judgment in Ashish Agarwal (Supra) is given. Moreover, in that case, petitioner did not argue that for AY 2013-14 the time limit would have expired even under TOLA on 31st March 2021;

(h) As regards Salil Gulati (Supra), the Delhi High Court, to reach its conclusion, has merely relied upon its earlier decision in Touchstone Holdings (Supra). It will be relevant to note that following Salil Gulati (Supra), a similar view was taken by the Delhi High Court in Yogita Mohan V/s. Income Tax Officer. Against the judgment, in an

SLP preferred by the assessee, the Apex Court has issued notice vide its order dated 20th February 2023. It should also be noted that the Hon'ble Gujarat High Court in Keenara Industries (P) Ltd. V/s. Income Tax Officer" and the Allahabad High Court in Rajeev Bansal V/s. Union of India¹ have taken a view that notices issued for AY 2013-14 were barred by limitation in view of the amended Section 149 of the Act. Subsequently, the Apex Court, in SLPs preferred by the Revenue, has issued notice and stayed both the orders/judgments;

(i) We are unable to comprehend the contention raised that if the notice dated 30th May 2022 under Section 148A(b) of the Act is valid in terms of Apex Court order in Ashish Agrawal (Supra), then the notice under Section 148 of the Act cannot be issued on 31st March 2021 and respondent cannot be expected to do impossible. It has nowhere been urged by petitioner that assessing officer ought to complete the proceedings before the show cause notice under Section 148A(b) of the Act was issued. It is the case of petitioner that the reopening notice under Section 148 ought to have been issued within 6 years from the end of the AY 2013-14. This limitation period, as extended by TOLA, expired on 31st March 2021. However, in the present case, the reopening notice has been issued in July 2022 and, therefore, beyond the statutory time limit. In any case, as stated above, the Hon'ble Supreme Court, while invoking powers under Article 142, consciously and categorically granted liberty to assesseees to raise all defences available to the assessee, including the defences under Section 149 of the Act. This specific and express directions cannot be set at naught. Accepting this contention of the Revenue would be a travesty

of justice.

38 *In the circumstances, in our view, the notice issued under Section 148 of the Act, impugned in this petition, for AY 2013-14 is issued beyond the period of limitation.*

39 *Having decided in favour of assessee/petitioner on this issue of limitation, we are not discussing the other grounds of challenge raised in the petition. Petitioner may raise all those contentions independently in any other proceeding.”*

4. In view of the above, **the Writ Petition is allowed.** The impugned notice is quashed and set aside.

5. We record that this order is restricted only to the point of limitation since the impugned notice had been issued for the Assessment Year 2013-2014, after the amendment to the Finance Act on 01.04.2021, and that too under the provisions existing prior to the amendment to the Finance Act.

(R.M.JOSHI, J.)

(RAVINDRA V. GHUGE, J.)