



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10815 OF 2024

Bhoomi Viral Shah

... Petitioner

Versus

Income-tax Officer, Ward 2(1), Thane & Ors.

... Respondents

Ms. Radha Halbe for the petitioner.

Mr. Akhileshwar Sharma for the respondents.

**CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.**

Date : 12 August, 2024

Oral Judgment (Per G.S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Learned Counsel for the Respondents waives service. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India challenges an order dated 26 May, 2023 passed under Section 147 read with Section 144 and Section 144B of the Income-tax Act (for short “**the Act**”). At the outset, we may note the substantive prayers which reads thus:

(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into

the legality and propriety thereof, to quash and set aside the notice dated 07.04.2021 issued under section 148 ("Exhibit A") which is now treated as deemed show cause notice under section 148A(b) in pursuance of issue letter dated 26.05.2022 ("Exhibit C"); the order dated 25.07.2022 passed under section 148A(d) of the Act ("Exhibit D"); the notice dated 25.07.2022 issued under section 148 of the Act ("Exhibit E1"); the assessment order dated 26.05.2023 passed under section 147 r.w.s 144 read with section 144B ("Exhibit F1"); the impugned Notice of Demand dated 26.05.2023 under section 156 ("Exhibit F2"); the Penalty Order dated 19.02.2024 under section 271(1)(b) (Exhibit "G1"); the Penalty Order dated 20.02.2024 under section 271(1)(c) (Exhibit "G2") and the Penalty Order dated 20.02.2024 under section 271F (Exhibit "G3").

(b) This Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction, directing the Respondents, its servants, subordinates, agents and successors in office to:

i) Quash the notice dated 07.04.2021 issued under section 148 ("Exhibit A") which is now treated as deemed show cause notice under section 148A(b) in pursuance of issue letter dated 26.05.2022 ("Exhibit C"); the order dated 25.07.2022 passed under section 148A(d) of the Act ("Exhibit D"); the notice dated 25.07.2022 issued under section 148 of the Act ("Exhibit E1"); the assessment order dated 26.05.2023 passed under section 147 r.w.s 144 read with section 144B ("Exhibit F1"); the impugned Notice of Demand dated 26.05.2023 under section 156 ("Exhibit F2"); the Penalty Order dated 19.02.2024 under section 271(1)(b) (Exhibit "G1"); the Penalty Order dated 20.02.2024 under section 271(1)(c) (Exhibit "G2") and the Penalty Order dated 20.02.2024 under section 271F (Exhibit "G3").

ii) to forthwith forbear from taking any steps whatsoever, including issue further notices in furtherance of the assessment order dated 26.05.2023 passed under section 147 r.w.s 144 read with section 144B ("Exhibit F1"); the impugned Notice of Demand dated 26.05.2023 under section 156 ("Exhibit F2"); the Penalty Order dated 19.02.2024 under section 271(1)(b) (Exhibit "G1"); the Penalty Order dated 20.02.2024 under section 271(1)(c) (Exhibit "G2") and the Penalty Order dated 20.02.2024 under section 271F (Exhibit "G3").

(c) That this Hon'ble Court be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting Respondents from taking any steps in furtherance of the assessment order dated 26.05.2023 passed under section 147 r.w.s 144 read with section

144B ("Exhibit F1"); the impugned Notice of Demand dated 26.05.2023 under section 156 ("Exhibit F2"); the Penalty Order dated 19.02.2024 under section 271(1)(b) (Exhibit "G1"); the Penalty Order dated 20.02.2024 under section 271(1)(c) (Exhibit "G2") and the Penalty Order dated 20.02.2024 under section 271F (Exhibit "G3")."

3. The primary grievance of the petitioner is that the notice under section 148 of the Act is issued to the petitioner beyond the limitation as prescribed under the provisions of Section 149 as would apply to the assessment year in question, namely, assessment year 2013-14.

4. The learned counsel for the petitioner has drawn our attention to the impugned notice dated 25 July, 2022 issued under section 148 of the Act for the AY 2013-14 to submit that the limitation as prescribed under the provisions of Section 149 and as applicable to the assessment year in question would be as applicable under sub-section (1)(b), which would contemplate the period of six years within which the notice under section 148 can be issued. The same reads thus:

"149. Time limit for notice. - (1) No notice under section 148 shall be issued for the relevant assessment year, -

a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);

b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is

likely to amount to one lakh rupees or more for that year.”

5. The period of six years relevant to the assessment year 2013-14 expired on 31 March, 2020. Thus, the amendment as incorporated in Section 149(1)(b) was not applicable for the re-opening/reassessment in question, which was for the assessment year 2013-14. It appears that overlooking such position, the Assessing officer, under the presumption that the amendment to the said provision as incorporated by Finance Act, 2022 with effect from 1 April, 2022 had become applicable to the facts in hand, i.e., A.Y. 2013-14, issued notice under section 148 dated 25 July, 2022 *inter alia* considering the decision of Supreme Court in ***Union of India vs. Ashish Agarwal***¹.

6. Learned counsel for the petitioner has placed reliance on the decision of a co-ordinate Bench of this Court in New India Assurance Company Ltd. vs. Assistant Commissioner of Income Tax & Ors.² to contend that in similar circumstances, the notice as issued to the petitioner in the said proceedings was held to be bad and illegal and was quashed by this Court. Our attention is invited to the relevant paragraphs of the said decision, which read thus:

“35. The Revenue’s contention that the reopening notice was to

¹ Civil Appeal No. 3005 of 2022 dated 4 May, 2022

² 158 Taxmann.com 367 (Bom)

relate back to an earlier date is entirely flawed and unacceptable. Thus, the reassessment notices issued for AY 2013-14 are patently barred by limitation as the six years limitation period under the Act (as extended by Section 3 of TOLA) expired by 31st March 2021. However, even on the Revenue's demurrer and assuming that such reopening notices could travel back in time and that the provisions of TOLA protected such reopening notices (we do not agree), even then, in so far as the notices issued for AY 2013-14 is concerned, would in any case be barred by limitation. As stated earlier, under the erstwhile Section 149, a notice under Section 148 could have been issued within a period of six years from the end of the relevant assessment year. The Notifications issued under TOLA, viz., Notification No.20/2021, which is relied upon by the Revenue, only cover those cases where 31st March, 2021 was the end date of the period during which the time limit, specified in, or prescribed or notified under the Income Tax Act falls for completion. The limitation under the Income Tax Act, 1961(erstwhile Section 149) for reopening the assessment for the AY 2013-14 expired on 31st March 2020. Hence, Notification No.20/2021 did not apply to the facts of the present case, viz., reopening notice for the AY 2013-14. Therefore, the Revenue could not issue any notice under Section 148 beyond 31st March 2021 and hence, even the relate back theory of the Revenue could not safeguard the reassessment proceedings initiated after 1st April 2021 for AY 2013-14."

7. Mr. Sharma has however argued that the petition ought not to be entertained as the petitioner has approached this Court with a delay inasmuch as in pursuance of the action taken by the Assessing Officer under section 148, the assessment order was passed on 26 May, 2023 against the petitioner and the present petition is filed on 23 July, 2024. He has submitted that thus the petition being filed almost after a period of one year, ought not to be entertained. It is submitted that the petitioner has also not appropriately explained the delay in filing this petition, the petition hence

needs to be dismissed on this count alone.

8. Responding to the contentions as urged on behalf of the Revenue, learned counsel for the petitioner would submit that although there is a remedy of an appeal against the assessment order dated 26 May, 2023, however, the order being inherently illegal as also now there is a fresh cause of action to the petitioner, as the order dated 19 February, 2024 under section 271(1)(b) was served on the petitioner and thereafter the order under Section 271(1)(c) dated 20 February, 2024 was issued against the petitioner, the present petition needs to be entertained.

9. We have heard learned counsel for the parties and with their assistance, we have also perused the record. It appears to us to be clear that the notice dated 25 July, 2022 under section 148 of the Act was issued to the petitioner for AY 2013-14 as noted above. As the provisions of Section 149 would apply, the limitation to issue notice under section 148 would expire if four years but not more than six years have elapsed from the end of the relevant assessment year, as per the provisions of Section 149(1)(b), as the provision stood prior to the amendment as incorporated by the Finance Act, 2022 brought into effect from 1 April, 2022. In the present case, admittedly, Section 148 notice was issued on 25 July, 2022, which is almost

two years after the limitation period had expired on 31 March, 2020, which was further extended upto 31 March, 2021 because of the notification issued as a result of Covid-19 pandemic.

10. Being a jurisdictional issue, looked from any angle, the notice dated 25 July, 2022 under Section 148 of the Act could not have been issued for the assessment year 2013-14. It is on such notice, the assessment order dated 26 May, 2023 has been passed. We may observe that this is clearly a case where the Assessing Officer has proceeded without jurisdiction and possibly applying the amended provisions of Section 149 as incorporated by the Finance Act to the case in hand when he issued notice dated 25 July, 2022 overlooking the fact that in the present case as the law would stand, the limitation had already expired and within the extended period of limitation as noted by us herein. Thus, once the notice itself was inherently without jurisdiction, the order passed on such notice although was passed without granting hearing to the petitioner, would obviously be rendered illegal. An order which is *ab initio* void cannot be saved in any circumstances or labeled to be not illegal and void, merely because the petitioner belatedly approached this Court and more so when such order was sought to be effected/implemented in a recent notice issued to the petitioner under

Section 271. Certainly the law would not permit enforcement of an assessment order which does not satisfy the test of law. We, thus, do not accept Mr. Sharma's contention when he submits that the petition deserves to be dismissed on the ground of delay and laches and/or the petitioner has acquiesced in the impugned assessment order. Any acquiescence to an illegal order can never bring about a situation where the illegality attributed to such an order would stand extinguished and the order can be termed to be legal. The law cannot be read in such manner. Thus, in the present case, an order which is illegal and void *ab initio* is sought to be given effect to, which cannot be permitted to be done.

11. In the light of the above discussion and applying the principles as laid down by this Court in New India Assurance Co. Ltd. (supra), there is no manner of doubt that the petition would be required to be allowed. It is accordingly allowed in terms of prayer clause (a).

12. Rule is made absolute in the aforesaid terms.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)